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In The

Supreme Court of the United States

SIMON BALDERAS, GILBERTO Z. TORRES and TEXAS LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

Appellants,

v.

STATE OF TEXAS, ET AL.,

Appellees.

On Appeal From The United States District Court For The Eastern District Of Texas

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

WHETHER THE DISTRICT COURT ERRED IN CONCLUDING THAT PROPOSED LATINO VOTER-REGISTRATION MAJORITY DISTRICTS FAIL TO SHOW THAT LATINOS ARE SUFFICIENTLY NUMEROUS TO CONSTITUTE THE "MAJORITY" IN ADDITIONAL DISTRICTS?

WHETHER THE DISTRICT COURT ERRED IN HOLDING THE LATINO POPULATION INSUFFICIENTLY COMPACT WHEN PROPOSED LATINO DISTRICTS WERE AS OR MORE COMPACT THAN OTHER DISTRICTS THAT THE COURT DREW OR RATIFIED?

WHETHER THE DISTRICT COURT ERRED IN SUMMARILY CONCLUDING, WITHOUT ANY FINDINGS OF FACT FOLLOWING A TRIAL, THAT A CHALLENGED REDISTRICTING PLAN DOES NOT DENY PLAINTIFFS AN EQUAL OPPORTUNITY TO PARTICIPATE IN THE POLITICAL PROCESS?

PARTIES TO THE PROCEEDING

Simon Balderas, Gilberto Z. Torres, and the Texas League of United Latin American Citizens were the plaintiffs in the District Court and are the appellants in this Court. The State of Texas and various of its officials, listed below, were defendants in the District Court and are appellees in this Court. A number of plaintiff-intervenors in the District Court are appellants in this Court and are filing separate jurisdictional statements. A complete list of parties to the proceeding follows:

Plaintiffs:

1. Simon Balderas
2. Gilberto Z. Torres
3. Texas League of United Latin American Citizens

Plaintiff Intervenors:

1. Brian Manley
2. Frank D. Sandoval Jr.
3. Eugene Pack
4. Congressman Tom DeLay
5. Congressman Joe Barton
6. Congressman John Culberson
7. Associated Republicans of Texas
8. John Denoyelles
9. Morris Overstreet
10. Boyce T. Breedlove
11. David Brown
12. David O. Zambrano
13. Joy Smith
14. Vivian Harris
15. Tony Campos
16. Ed Gonzales
17. Margaret P. Rodriguez

PARTIES TO THE PROCEEDING – Continued

18. Michael Moon
19. Dan Pedroza
20. Pauline Dixon
21. Raphael Quintanilla
22. Hargie Faye Savoy
23. Ralph McCloud
24. Dianna Villasana
25. Gina Dixon
26. Alex Vidales Sr.
27. George Rios
28. Roy Stanley
29. Phyllis Cottle
30. Dorothy M. Lee
31. Molly Woods
32. J. B. Mayfield
33. Ledbetter Neighborhood Association
34. Williamson County, Texas
35. Texas Farm Bureau Mutual Insurance Company
36. Roy Millner
37. Bonnie Breazeale
38. Bennie Escobar
39. Denise Escobar
40. William R. Leo
41. Jesse Diaz
42. Lulac 4496 of Dallas
43. Congresswoman Eddie Bernice Johnson
44. Stephan Leroy Honore
45. Henry Martinez
46. Atascosa County, Texas
47. Bell County, Texas
48. Grayson County, Texas
49. Johnson County, Texas
50. Wichita County, Texas
51. Texas State Conference of NAACP Branches

PARTIES TO THE PROCEEDING – Continued

52. Texas Coalition of Black Democrats
53. Art Murillo
54. Charles E. Vinn Sr.
55. Juanita Valdez-Cox
56. Leo Montalvo
57. Rolando Arriola
58. Emily Amps
59. Louis Laster
60. Terry Meza
61. Congressman Kevin Brady
62. Congressman Sam Johnson
63. Congressman Gene Green
64. Congresswoman Sheila Jackson Lee
65. Congressman Nicholas Lampson
66. Lester Bellow
67. Homer C. Guillory
68. Willie Davis
69. John Bland
70. Mexican-American Legislative Caucus, Texas House of Representatives
71. Guy C. Jackson III
72. John Archer
73. Howard County, Texas
74. Phil Sudan
75. Congressman Ken Bentsen
76. The Texas Legislative Black Caucus

Defendants and Defendant Intervenors:

1. State of Texas
2. Rick Perry, Governor of Texas
3. James "Pete" Laney, Speaker of the Texas House of Representatives

PARTIES TO THE PROCEEDING – Continued

4. Henry Cuellar, Secretary of State of Texas
5. Susan Weddington, Chair of Texas Republican Party
6. Molly Beth Malcolm, Chair of Texas Democratic Party
7. Bill Ratliff, Lieutenant, Governor of Texas
8. John Cornyn, Attorney, General of Texas
9. Carol Keeton Rylander, Comptroller of Public Accounts of Texas
10. David Dewhurst, Texas Land Commissioner

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS vi

TABLE OF AUTHORITIES vii

JURISDICTION 1

OPINIONS AND ORDERS BELOW 1

RELEVANT STATUTES AND REGULATIONS 1

STATEMENT OF THE CASE 1

A. Factual Background 3

B. Procedural History 4

C. District Court's Orders 5

1. Congressional Redistricting Plan 5

2. Senate Redistricting Plan 6

ARGUMENT – THE QUESTIONS PRESENTED IS SUBSTANTIAL 8

I. Precedent Establishes Clear Requirements to Evaluate Claims of Dilutive "Packing" Under Section 2 of the Voting Rights Act 11

II. The District Court Erred in its Analysis of Numerosity Under the First *Gingles* Precondition 14

III. The District Court Applied an Incorrect "Compactness" Standard 18

IV. The District Court Erred in Failing to Make Findings in Support of its Conclusions Sufficient to Allow Proper Appellate Review 20

CONCLUSION 26

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Beer v. United States, 425 U.S. 130 (1976) 25

Bush v. Vera, 517 U.S. 952 (1996) 18

Campos v. City of Houston, 113 F.3d 544 (5th Cir. 1997) 15

Cane v. Worchester County, Md., 35 F.3d 921 (4th Cir. 1994), *cert. denied*, 513 U.S. 1148 (1995) 16, 18

Clark v. Calhoun County, Miss., 21 F.3d 92 (5th Cir. 1994) 18, 21

Cousin v. McWherter, 46 F.3d 568 (6th Cir. 1995) 21

Gingles v. Edmisten, 590 F. Supp. 345 (1984), *aff'd sub nom. Thornburg v. Gingles*, 478 U.S. 30 (1986) 15

Gomez v. City of Watsonville, 863 F.2d 1407 (9th Cir. 1988), *cert. denied*, 489 U.S. 1080 (1989) 17

Goosby v. Town of Hempstead, NY, 956 F. Supp. 326 (E.D.N.Y. 1997) 18

Goosby v. Town of Hempstead, NY, 180 F.3d 476 (2d Cir. 1999), *cert. denied*, 528 U.S. 1138 (2000) 16

Growe v. Emison, 507 U.S. 25 (1993) 12, 15

Harvell v. Ladd, 958 F.2d 226 (8th Cir. 1992) 22

Houston v. Lafayette County, 56 F.3d 606 (5th Cir. 1995) 18

Hunt v. Cromartie, 121 S. Ct. 1452 (2001) 26

Jenkins v. Red Clay Consolidated School District Board of Education, 4 F.3d 1103 (3d Cir. 1993), *cert. denied*, 512 U.S. 1252 (1994) 16

Johnson v. De Grandy, 512 U.S. 997 (1994).....13, 17

TABLE OF AUTHORITIES – Continued

Page

Johnson v. Hamrick, 196 F.3d 1216 (11th Cir. 1999) 21

Kelley v. Everglades Drainage District, 319 U.S. 415 (1943) 26

Kirksey v. Board of Supervisors, 554 F.2d 139 (5th Cir. 1977), *cert. denied*, 434 U.S. 968 (1977) 17

Lee County Branch of the NAACP v. City of Opelika, 748 F.2d 1473 (11th Cir. 1984).... 21

McNeil v. Springfield Park District, 851 F.2d 937 (7th Cir. 1988), *cert. denied*, 35 F.3d 921 (1989) 16

Negron v. City of Miami Beach, 113 F.3d 1563 (11th Cir. 1997) 16

Rogers v. Lodge, 458 U.S. 613 (1982) 20

Romero v. City of Pomona, 883 F.2d 1418 (9th Cir. 1989).... 16

Sanchez v. Colorado, 97 F.3d 1303 (10th Cir. 1996), *cert. denied*, 520 U.S. 1229 (1997) 16, 21

Statewide Reapportionment Advisory Committee v. Theodore, 508 U.S. 968 (1993).... 21

Thornburg v. Gingles, 478 U.S. 30 (1986) .... *passim*

Uno v. City of Holyoke, 72 F.3d 973 (1st Cir. 1995) 17

Valdespino v. Alamo Hts. Independent Sch. District, 168 F.3d 848 (5th Cir. 1999), *cert. denied*, 528 U.S. 1114 (2000).... 15

Vera v. Bush, 933 F. Supp. 1341 (S.D. Tex. 1996) 19

Voinovich v. Quilter, 507 U.S. 146 (1993) 12

Westwego Citizens for Better Government v. City of Westwego, 872 F.2d 1201 (5th Cir. 1989).... 21

White v. Regester, 412 U.S. 755 (1973).... 20

TABLE OF AUTHORITIES – Continued

Page

FEDERAL STATUTES

28 U.S.C. § 1253 1

28 U.S.C. § 1291 1

28 U.S.C. § 2101(b) 1

42 U.S.C. § 1973(a) 11

Fed. R. Civ. P. 52(a) 1, 25

S. Rep. No. 97-417 (1982) 11, 20, 23

Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973 ..... *passim*

MISCELLANEOUS

Richard H. Pildes & Richard G. Niemi, Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno, 92 Mich. L. Rev. 483, 555 & n. 203 (1993) 19

Department of Justice Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 12, 5412 (2001) 25

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §§ 1253 and 1291 to review the District Court's orders issued following the congressional redistricting and senate redistricting phases of trial in this case. Plaintiffs-appellants filed their notice of appeal on December 14, 2001, within the time period specified in 28 U.S.C. § 2101(b). Appellants' Juris. Statement App. ("J.S. App.") at 20. Plaintiffs-appellants filed an amended notice of appeal on January 29, 2002 in response to a January 18, 2002 amended judgment in the senate portion of the case. J.S. App. at 39.

OPINIONS AND ORDERS BELOW

The Orders following the congressional and senate phases of the case are not yet reported and are reprinted in full in the Appendix. J.S. App. at 1, 21.

RELEVANT STATUTES AND REGULATIONS

Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, is reproduced at J.S. App. at 41. Federal Rule of Civil Procedure 52(a) is reproduced at J.S. App. at 42.

STATEMENT OF THE CASE

Section 2 of the Voting Rights Act mandates adoption of redistricting plans that afford Latino citizens an equal opportunity to participate in the political process and to

elect representatives of their choice. 42 U.S.C. § 1973; *Thornburg v. Gingles*, 478 U.S. 30 (1986). Plaintiffs-appellants allege that the Texas congressional and state senate plans violate the Voting Rights Act because they dilute Latino voting strength.

After the Texas Legislature failed to enact any redistricting plan in its 2001 session, the Texas Legislative Redistricting Board (LRB) convened and enacted state legislative redistricting plans, including the senate plan challenged here.

Plaintiffs-appellants' (hereafter "plaintiffs") suit challenging these state legislative redistricting plans and seeking the adoption of a congressional redistricting plan proceeded to trial before a three-judge panel of the United States District Court for the Eastern District of Texas in October and November, 2001. The District Court upheld the LRB's senate redistricting plan, which contained the same number of Latino-majority districts as the previous decade's redistricting plan. In addition, the District Court crafted its own congressional plan that contained the same number of Latino-majority districts as the previous decade's redistricting plan. In both the congressional and senate phases of the case, the lower court erroneously ruled, without explanation of its reasoning, that proposed districts in which Latinos comprise the majority of registered voters fail to satisfy the first precondition for section 2 relief, as established in *Thornburg v. Gingles*.

Plaintiffs appeal the District Court's decisions with respect to the Texas congressional and senate redistricting plans. The District Court failed to apply properly the

standards for relief under section 2 of the Voting Rights Act. As a matter of law, plaintiffs' showing meets and exceeds what the Voting Rights Act requires. In addition, as its lack of any findings demonstrates, the District Court also failed to give adequate consideration to the voting rights claims before it.

A. Factual Background

The 2000 Census revealed that the Hispanic[1] population of Texas increased by 2.3 million persons during the preceding decade. This rise in the Latino population, amounting to 60 percent of the state's growth overall, contrasted sharply with an increase of only 641,000 Anglo persons.[2] As Latinos rose to 32 percent of the state's population, Texas gained two additional congressional seats, bringing the total number of seats in the Texas delegation to 32.

Against this backdrop of Latino population growth, the Texas Legislature, the state judiciary and ultimately the federal court undertook the task of statewide redistricting. The Texas Legislature adjourned its regular session on May 28, 2001 without enacting any redistricting plans. The LRB, charged by default with the responsibility of crafting state legislative districts, convened on

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[1] Plaintiffs employ the terms "Latino" and "Hispanic" interchangeably. Generally, "Latino" is the preferred term in this brief, except with respect to census figures because, although the Census Bureau also views the two terms as synonyms, "Hispanic" is the Bureau's preferred nomenclature in its data reports.

[2] The term "Anglo" refers to Non-Hispanic White persons.

June 6, 2001. On July 24, 2001, the LRB enacted plans for the Texas House and Texas Senate. Texas congressional redistricting remained unaddressed by the state legislature when Governor Rick Perry declared that he would not convene a special legislative session for the purpose of congressional redistricting.

B. Procedural History

Plaintiffs filed this challenge to congressional, senate and house redistricting in the United States District Court for the Eastern District of Texas, which initially deferred action pending resolution of state court lawsuits. After parties filed suit in various state courts, the Texas Supreme Court declared that dominant jurisdiction lay in the Travis County District Court, and the state-court congressional redistricting litigation proceeded to trial in September 2001. After trial, on October 19, 2001, the Texas Supreme Court vacated the redistricting plan crafted by the Travis County court. Noting that, as a result, there was no state plan in place for congressional redistricting, the United States District Court commenced trial in the congressional phase of this litigation on October 22, 2001. The United States District Court subsequently tried the senate phase of the case on November 5 and 6, 2001.

The District Court issued its own congressional plan on November 14, 2001 and, on November 28, 2001, upheld the LRB's senate plan. Plaintiffs filed their notice of appeal on December 14, 2001 and filed their amended

notice of appeal on January 29, 2002 in response to an amended judgment.

C. District Court's Orders

1. Congressional Redistricting Plan

The District Court's adopted congressional redistricting plan did not include a single additional Latino-majority congressional district, and instead placed the state's two new congressional districts in majority-Anglo suburban areas. New Congressional District 31 connects the suburbs of Houston and Austin and is more than 70 percent Anglo. New Congressional District 32 is located in the Dallas suburbs and is more than 60 percent Anglo.

The District Court's plan did maintain pre-existing Latino-majority districts, but these districts had, with the dramatic growth of the Texas Latino population, become more densely populated with Latino residents over the past decade. Rejecting plaintiffs' request to redistrict the South Texas region to include seven districts with a Latino voter majority, the District Court created in that region only six districts, with an average 72 percent Latino population.

Although much of the evidence at trial focused on the question of minority voting rights, the lower court made no findings of fact regarding Latino population increase, geographic concentration, cohesive voting among Latinos, or Anglo bloc voting. The District Court examined none of the factors identified in the Senate Report accompanying the 1982 amendments to the Voting Rights Act as relevant to a vote dilution inquiry.

Concluding that "the evidence shows that the Latino population is not sufficiently compact or numerous to support another, effective majority Latino citizenship district in Texas," the District Court failed to consider any of the factual evidence that plaintiffs presented in satisfaction of the first *Gingles* precondition, including, most importantly, plaintiffs' proposed seven Latino registered-voter majority districts in South Texas. J.S. App. at 43.

Within a 16-page opinion, the District Court's entire discussion of Latino vote dilution is confined to four sentences:

> We find that the plaintiffs have failed to prove that vote dilution will occur in violation of section 2 of the Voting Rights Act in the absence of seven Latino citizenship majority congressional districts. . . . The evidence did not persuade us that . . . Latino . . . voting age populations are sufficiently numerous to form voting age population majorities in effective districts. . . . As for the proposed Latino opportunity districts, the evidence shows that the Latino population is not sufficiently compact or numerous to support another, effective majority Latino citizenship district in Texas, in Dallas County or in South Texas. We find that, under the totality of the circumstances, the failure to create seven such districts will not prevent full and equal Latino participation in the political process.

J.S. App. at 12, 14-15.

2. Senate Redistricting Plan

Two weeks after issuing its decision in the congressional phase of the case, the District Court upheld the

31-seat senate redistricting plan that the LRB created. This senate plan created only six Latino majority districts in South Texas. In this phase of the litigation, plaintiffs again proposed seven Latino voter majority districts in the region (J.S. App. at 46), and the District Court again concluded that plaintiffs had failed to satisfy the requirements of the first *Gingles* precondition.

The District Court adopted its earlier conclusions from the congressional phase of the case and did not consider facts and evidence relevant to plaintiffs' proposed senate districts, despite the fact that plaintiffs' proposed senate districts were geographically different from plaintiffs' proposed districts in the congressional phase.

The court's entire relevant discussion is as follows:

> Looking first to the Balderas . . . plaintiffs' claims, we must reject these claims for reasons substantially similar to those given in our decision in the congressional redistricting case. The record before us demonstrates that the Latino population is not sufficiently compact or numerous to support another, effective majority Latino citizenship district in Dallas and Tarrant Counties or in South Texas. We further find that, under the totality of the circumstances, the failure to create a seventh Latino-majority district will not prevent full and equal Latino participation in the political process. Rather, creating such a district would risk giving rise to retrogression in the existing Latino-majority districts. We conclude that these plaintiffs have failed to prove that section 2 of the Voting Rights Act

> requires any correction to the LRB Senate plan based on allegations of Latino vote dilution.

J.S. App. at 26.

ARGUMENT – THE QUESTIONS PRESENTED IS SUBSTANTIAL

With growth in the Latino population largely responsible for the increase in Texas' population in the 1990s and for the concomitant state gain of two congressional seats following the 2000 Census, plaintiffs invoked the jurisdiction of the federal court to draw new congressional and state legislative district lines cognizant of the need to prevent Latino vote dilution. Even though these Voting Rights Act claims are what led to the convening of a three-judge District Court, the court paid scant attention to the claims in subsequently designing a congressional redistricting plan and ratifying a Texas state senate plan. While the panel described at some length how it balanced the interests and arguments of the myriad partisan political interests that intervened in plaintiffs' action, it rejected plaintiffs' serious civil rights claims with a few conclusory lines and no findings of fact or clear conclusions of law whatsoever. Although the panel invoked the proper phrase, "totality of the circumstances," in rejecting plaintiffs' claims, its cursory decision demonstrates a failure to evaluate that totality and a failure to provide the parties and this Court an adequate basis from which to assess or understand the panel's conclusions. This error sets a dangerous precedent for the subordination of voting rights claims in litigation following future decennial redistricting throughout the nation.

Even more troubling and important than the District Court's cursory overall evaluation are two erroneous legal conclusions underlying its sparely-worded rejection of plaintiffs' claims. First, the court held that Latinos were not numerous enough to constitute a "majority" in an additional congressional district or an additional senate district even though plaintiffs proved that Latinos could constitute over 50 percent of registered voters in such districts. In an abundance of caution made possible by the substantial numbers of Latinos residing in South Texas, plaintiffs presented and requested only the creation of Latino *voter-registration* majority districts in South Texas even though no federal court had ever before required such a high threshold – previous courts having opted instead for population, voting age, or citizen voting age majority standards.

Although Fifth Circuit precedent itself firmly establishes a lesser standard, the District Court nonetheless rejected plaintiffs' satisfaction of the unprecedentedly difficult voter-registration standard. The District Court thus imposed, without fully articulating it, an even higher standard still – a standard that is at once both difficult to conceive and nigh impossible to achieve. The boundless nature of the court's implied standard – exceeding a voter majority by an immeasurable amount – is contradictory to *Gingles*, which crafted the majority-minority standard as a measure of opportunity to elect in a district where a minority group's voting strength is not overridden because of its size. The District Court's error sets a standard that could render the Voting Rights Act a dead letter; such a precedent requires correction.

Matching this unprecedented standard for numerosity under the Voting Rights Act and *Gingles*, the District Court also imposed an impossible – and again wholly unarticulated – measure of compactness. Without ever explaining why, the court concluded that the Latino population of South Texas is not sufficiently compact to warrant an additional senatorial or congressional district. Yet, in other parts of the Texas maps, the court simultaneously adopted or ratified districts of lesser compactness. Moreover, plaintiffs' proposed Latino-majority districts were as compact or more compact than court-reviewed districts that applied in Texas throughout the 1990s. Thus, despite precedent establishing the appropriateness of a relaxed compactness standard for Voting Rights Act remedies, the court actually imposed a stricter standard than it applied to other districts. This error, like its companion described above, sets a precedent whose ill-defined but nonetheless apparent effect is to render Voting Rights Act claims nearly impossible ever to prove.

The District Court's errors threaten to subject plaintiffs and other Latino voters in Texas to a decade of elections in districts that dilute their voting strength. Moreover, the insult to this ongoing injury lies in a largely unexplained federal court review whose only obvious instruction for future challenges is to establish largely unachievable standards under section 2 of the Voting Rights Act for "majority" and compactness. These erroneous precedents, together with the District Court's failure to explain its reasoning through findings of fact and clear rulings of law, expand the threat to voting rights to other jurisdictions, within and outside the Fifth Circuit, and to other minority communities. These errors

present substantial questions that necessitate this Court's careful review.

I. Precedent Establishes Clear Requirements to Evaluate Claims of Dilutive "Packing" Under Section 2 of the Voting Rights Act.

Section 2 of the Voting Rights Act prohibits any state or political subdivision from imposing a "voting qualification or prerequisite to voting or standard, practice or procedure . . . in a manner which results in the denial or abridgement of the right to vote on account of race or color." 42 U.S.C. § 1973(a).

In enacting the 1982 amendments to the Voting Rights Act, Congress explicitly intended the act to protect minority voters from mechanisms which had the *effect* of diminishing their voting strength. "[D]iscriminatory election systems or practices which operate, designedly or otherwise, to minimize or cancel out the voting strength and political effectiveness of minority groups, are an impermissible denial of the right to have one's vote fully count, just as much as outright denial of access to the ballot box." S. Rep. No. 97-417, at 28 (1982).

This Court's opinion in *Thornburg v. Gingles* provides the framework for determining the existence of vote dilution after the 1982 amendments. Under *Gingles*, plaintiffs first must demonstrate:

1. that the minority community is sufficiently large and compact to constitute a majority in a single-member district;

2. that minorities are politically cohesive; and,

3. that the white majority votes as a bloc generally to defeat the minority's preferred candidate.

Gingles, 478 U.S. at 50-51.

After this *Gingles* three-part threshold is met, plaintiffs must also show that, under the "totality of the circumstances," they do not possess the same opportunities to participate in the political process and elect representatives of their choice enjoyed by other voters.

The *Gingles* framework, including the three-part threshold test, was developed in litigation over multi-member electoral districts, but it also applies in single-member district cases challenging the failure to draw a sufficient number of majority-minority districts. *Growe v. Emison*, 507 U.S. 25, 40 (1993). Thus, the framework applies to cases, like this one, challenging redistricting after the decennial census.

"Packing" minority voters is a well-recognized dilutive mechanism. "How such concentration or 'packing' may dilute minority voting strength is not difficult to conceptualize. A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, the group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a super-majority, it will be assured only two candidates." *Voinovich v. Quilter*, 507 U.S. 146, 153-154 (1993); *see also Gingles*, 478 U.S. at 46 n. 11 ("Dilution of racial minority group voting strength may be caused [either] by the dispersal of blacks into districts in which they constitute an ineffective minority

of voters or from the concentration of blacks into districts where they constitute an excessive majority.").

Proving dilutive packing in the redistricting context requires plaintiffs to show, in satisfaction of the first *Gingles* precondition, that creating additional majority-minority districts is possible.[3] *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994).

Had the District Court properly applied this well-established framework for evaluating a claim of dilutive packing, it would have concluded that Latino population growth in Texas over the past decade has resulted in a sufficient number of Latino voters to comprise the majority in seven, as opposed to the pre-existing six, senate and congressional districts in the South Texas region – the pre-existing districts having become "packed" over the course of the 1990s. Instead, without ever explaining the new standards it would apply, the District Court departed from the established framework and applied unprecedented and amorphous standards under the first *Gingles* precondition to deny the addition of Latino voter majority seats in Congress and the Texas Senate. Almost as an afterthought, the court also stated its conclusion on the "totality of the circumstances" without ever considering or determining the effect of evidence presented on that issue.

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[3] Of course, the remainder of the *Gingles* framework also applies to such claims; however, with the exception of its conclusory statement regarding the "totality of the circumstances," the District Court here addressed only the first *Gingles* precondition.

II. The District Court Erred in its Analysis of Numerosity Under the First *Gingles* Precondition.

The District Court improperly denied plaintiffs' claims under section 2 when it rejected, under the first *Gingles* precondition, proposed districts that contained not only a Latino population, voting age, and citizen voting age majority, but a Latino *registered voter* majority.[4] Neither this Court nor any other federal court has ever held plaintiffs to a majority-registration threshold for *Gingles* demonstration districts. Thus, as a matter of law, plaintiffs exceeded what precedent requires, and the District Court improperly rejected plaintiffs' proposed Latino-majority districts.

The District Court had before it substantial and uncontroverted evidence that seven – not six – Latino voter majority districts are possible in South Texas in a congressional and in a senate redistricting plan. A Latino majority among registered voters in each of the seven districts, by definition, constitutes a "majority" in that district for the purposes of the first *Gingles* precondition. Indeed, the term "majority" as used in the first *Gingles* precondition would lose any coherent meaning if registration "majority" – one of the highest conceivable standards of majority status – were deemed not to satisfy the first *Gingles* precondition "majority" threshold.

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[4] The Texas Secretary of State collects and reports information regarding the number of registered voters in the state and the number of registered voters who are Spanish-surnamed, i.e., voters whose names appear on the U.S. Census list of Spanish surnames. These Spanish-surnamed registered voters are referred to in this brief as Latino registered voters.

Moreover, this Court has never required such a high threshold showing as voter-registration majority. *Gingles* itself refers to majority population, and affirmed a lower court ruling that relied on voting age population as the threshold for satisfying the "majority" requirement. *See Gingles v. Edmisten*, 590 F. Supp. 345 (1984), *aff'd sub nom. Thornburg v. Gingles*, 478 U.S. 30 (1986). Subsequently, in *Growe*, this Court referred to total population and voting age population data in satisfaction of the numerosity requirement of the first *Gingles* precondition, but declined to rule on the question of the correct population measure. *Growe*, 507 U.S. at 38 n. 4.

Furthermore, plaintiffs' demonstration of seven senate and congressional districts with a Latino voter majority more than satisfied the Fifth Circuit's own bright-line test for the first *Gingles* precondition. *See Valdespino v. Alamo Hts. Indep. Sch. Dist*, 168 F.3d 848, 852-53 (5th Cir. 1999), *cert. denied*, 528 U.S. 1114 (2000) ("a bright line test" of greater than 50% *citizen voting age population* applied to determine whether plaintiffs constitute a majority in their demonstration district); *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997) (declining to reject citizenship as relevant factor in *Gingles* I analysis). This Fifth Circuit bright-line test is citizen voting age population majority, a standard plaintiffs met and exceeded.[5]

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[5] In the District Court, no party disputed, or could dispute, that, due to lower income and education levels, minorities in general, and Latinos in Texas in particular, register to vote at lower rates than whites. Therefore, because the Latino citizen voting-age proportion in these districts is necessarily higher than the Latino registration proportion, the proposed districts satisfy the Fifth Circuit bright line rule – itself a stringent rule in comparison to other circuits – with additional room to spare.

Despite clear precedent from this Court and the Fifth Circuit, however, the District Court held insufficient plaintiffs' proposed voter-registration majority districts – districts meeting a stricter standard than any other court has ever required minority plaintiffs to meet. *See Goosby v. Town of Hempstead, NY*, 180 F.3d 476 (2d Cir. 1999) (affirming decision that majority voting age population in proposed district met first *Gingles* precondition), *cert. denied*, 528 U.S. 1138 (2000); *Jenkins v. Red Clay Consol. School Dist. Bd. of Educ.*, 4 F.3d 1103 (3d Cir. 1993) (same), *cert. denied*, 512 U.S. 1252 (1994); *Cane v. Worchester County, Md.*, 35 F.3d 921 (4th Cir. 1994) (same), *cert. denied*, 513 U.S. 1148 (1995); *McNeil v. Springfield Park District*, 851 F.2d 937, 944-945 (7th Cir. 1988) (first *Gingles* precondition requires majority voting age population), *cert. denied*, 35 F.3d 921 (1989); *Romero v. City of Pomona*, 883 F.2d 1418 (9th Cir. 1989) (citizen voting age population is appropriate measure); *Sanchez v. Colorado*, 97 F.3d 1303, 1315 (10th Cir. 1996) (majority voting age population in proposed district satisfies first *Gingles* precondition), *cert. denied*, 520 U.S. 1229 (1997); *Negron v. City of Miami Beach*, 113 F.3d 1563, 1567-1568 (11th Cir. 1997) (Latinos could not make out section 2 claim because they could not constitute majority of citizen voting age population in single-member district).

Plaintiffs have been completely unable, despite a thorough search, to uncover any case in any circuit where plaintiffs who, as here, constitute the majority of the *registered voters* in a single-member district, nonetheless lost at the liability phase for failure to fulfill the first *Gingles* precondition.

Thus, the lower court's refusal to hold that plaintiffs' proposed Latino voter-registration majority districts satisfy the first *Gingles* precondition is unprecedented, and constitutes reversible legal error. Because plaintiffs exceeded the highest *Gingles* threshold ever imposed, this Court need not resolve the issue, left undecided to date, "about which characteristic of minority populations ought to be the touchstone for proving a vote dilution claim and devising a sound remedy." *De Grandy*, 512 U.S. 1008-1009. Plaintiffs indisputably proved voter-majority districts; plaintiffs having reached that highest rung, the Court need not decide which of the lower rungs is high enough to scale *Gingles* I, to recognize the District Court's error.[6]

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[6] Although plaintiffs here offered voter-registration majority districts, they did so in an abundance of caution and because Texas demographics offered the opportunity to exercise such caution. Plaintiffs do not suggest that such majorities should become the minimum threshold for satisfying the first *Gingles* precondition. Indeed, because the Voting Rights Act presumes lower voter turnout and diminished political participation among minority groups that still bear the lingering effects of past discrimination in the form of lower socio-economic status, *Gingles*, 478 U.S. at 69, basing the first *Gingles* precondition on a measure of political participation, such as registration, punishes minority groups for bearing the effects of the very dilution they seek to remedy. *See also Gomez v. City of Watsonville*, 863 F.2d 1407 (9th Cir. 1988), *cert. denied*, 489 U.S. 1080 (1989); *Uno v. City of Holyoke*, 72 F.3d 973, 986 (1st Cir. 1995) ("[L]ow voter turnout in the minority community sometimes may result from the intersection of the electoral system with the effects of past discrimination, which together operate to discourage meaningful electoral participation."); *Kirksey v. Board of Supervisors*, 554 F.2d 139, 145 n. 13 (5th Cir. 1977), *cert. denied*, 434 U.S. 968 (1977).

III. The District Court Applied an Incorrect "Compactness" Standard.

With respect to the "compactness" element of the first *Gingles* precondition, the District Court failed to apply any legal standard to evaluate whether the Latino population of the South Texas region is sufficiently compact to comprise the majority in seven congressional or state senate districts. *See Bush v. Vera*, 517 U.S. 952, 997 (1996) (Kennedy, J., concurring) ("The first *Gingles* condition refers to the compactness of the minority population, not to the compactness of the contested district.").[7]

Fifth Circuit precedent required the District Court to apply the compactness test of the first *Gingles* precondition only to evaluate whether an additional Latino-majority district was achievable. *See Houston v. Lafayette County*, 56 F.3d 606, 611 (5th Cir. 1995) (*en banc*) ("[T]he question is not whether the plaintiff residents' proposed district was oddly shaped, but whether the proposal demonstrated that a geographically compact district could be drawn."); *Clark v. Calhoun County, Miss.*, 21 F.3d 92, 95 (5th Cir. 1994) ("[P]laintiffs' proposed district is not cast in stone. It was simply presented to demonstrate that a

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[7] This Court has explained that even section 2 remedial districts challenged as racial gerrymanders must be "reasonably" compact but need not "defeat rival compact districts designed . . . in endless beauty contests." *Vera*, 517 U.S. at 977; *see also Goosby*, 956 F. Supp. 326, 350 n. 28 (E.D.N.Y. 1997) ("a relaxed standard of compactness applies to districts drawn to remedy a section 2 dilution violation"); *Cane*, 35 F.3d at 926 n. 6 (upholding compactness decision of lower court despite fact that proposed majority-minority county commissioner district divided at least two municipalities).

majority-black district is feasible in Calhoun County."). Had it applied that standard to the evidence, the District Court could reach no other conclusion than that the compactness standard was met.

The District Court had before it abundant and uncontradicted evidence regarding the mathematical measures of compactness of plaintiffs' proposed districts and the relative compactness of those districts as compared to past districts enacted by the Texas Legislature. Yet, the District Court did not address this evidence at all in its conclusory holding. The District Court also failed to consider plaintiffs' unchallenged evidence regarding the community of interest encompassed by plaintiffs' proposed districts, as well as expert testimony regarding the historical familial and commercial relationships among residents of the proposed districts.

Most important, plaintiffs' proposed Latino districts were more compact than 10 congressional districts that applied in Texas throughout the 1990s and more compact than 6 remedial congressional districts created by a three-judge District Court in *Vera v. Bush*, 933 F. Supp. 1341 (S.D. Tex. 1996).[8] By most measures, the proposed

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[8] Plaintiffs here refer to the mathematical measure of compactness known as "perimeter to area." The "perimeter to area" measure of compactness was provided in this case by the Texas Legislative Council for every proposed redistricting plan and evaluates the irregularities of a district's borders by calculating the ratio of the district's area to the square of the district's perimeter. *See* Richard H. Pildes & Richard G. Niemi, *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After* Shaw v. Reno, 92 Mich. L. Rev. 483, 555 & n. 203 (1993).

districts were more compact than other districts crafted or ratified by the District Court in this very case.

In short, the District Court failed to apply the correct compactness standard – whether it was possible to create reasonably compact districts – in reaching its unsupported conclusion on the first *Gingles* precondition. If left to stand, the District Court's ruling sets an undefined, but unquestionably higher, standard of compactness for section 2 districts that cannot be supported under law or precedent.

IV. The District Court Erred in Failing to Make Findings in Support of its Conclusions Sufficient to Allow Proper Appellate Review.

This Court has long held that cases under the Voting Rights Act require findings that are "a blend of history and an intensely local appraisal of the design and impact of the [challenged practice] in the light of past and present reality, political and otherwise." *White v. Regester*, 412 U.S. 755, 769-770 (1973). The legislative history of the Voting Rights Act reiterates the reasoning of *White* and affirms that "the question whether the political processes are 'equally open' depends on a searching practical evaluation of the 'past and present reality.' " S. Rep. No. 97-417, at 30. Detailed fact finding is required in voting cases because the "determination [of a violation] is peculiarly dependent upon the facts of each case." *Rogers v. Lodge*, 458 U.S. 613, 621 (1982), *quoted in Gingles*, 478 U.S. at 79.

Here, the District Court's failure to evaluate facts related to plaintiffs' vote dilution claim, and to make

factual findings in support of its conclusions, not only deprives this Court of the ability fully to review its ruling, it constitutes reversible error in the context of a Voting Rights Act case. Because of its expansive view of what is required for equitable adjudication of voting rights claims, this Court has remanded Voting Rights Act cases that do not include adequate findings of fact. *See, e.g., Statewide Reapportionment Advisory Comm. v. Theodore*, 508 U.S. 968 (1993) (vacating judgment and remanding for further consideration in light of Solicitor General's position that court gave inadequate consideration to, and made inadequate findings concerning, allegations of vote dilution).

Circuit court decisions similarly insist upon detailed factual findings in Voting Rights Act cases. *See, e.g., Clark*, 21 F.3d at 97 (remanding for failure to make findings related to compactness: "we cannot properly review the District Court's finding because it failed to explain the nature of the 'diverse interests' and why they are so significant that plaintiffs' proposed district could not be effectively represented."); *Sanchez*, 97 F.3d at 1316 ("Broad and general findings, not explicitly tethered to any particular testimony – especially in the [Voting Rights Act] context which demands penetrating case by case, fact bound analysis – simply do not provide the foundation for proper appellate review."); *Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1203-1204 (5th Cir. 1989) (findings "manifestly inadequate" because "stated in conclusory fashion, with virtually no reference to the evidence presented at trial"); *Cousin v. McWherter*, 46 F.3d 568, 574-575 (6th Cir. 1995); *Johnson v. Hamrick*, 196 F.3d 1216, 1223 (11th Cir. 1999); *Lee*

County Branch of the NAACP v. City of Opelika, 748 F.2d 1473, 1480 (11th Cir. 1984); *Harvell v. Ladd*, 958 F.2d 226, 229 (8th Cir. 1992).

In this case, the District Court made no findings of fact in deciding the merits of plaintiffs' vote dilution claims in either the congressional or senate phases of the litigation. The District Court's ultimate conclusion that plaintiffs failed to satisfy the first *Gingles* precondition is unaccompanied by any findings of fact regarding plaintiffs' seven proposed districts, including facts about the districts' Latino voting age, citizen voting age, and registered voter majorities; and about the districts' compactness measures, relative compactness as compared to legislatively-drawn congressional districts in the state, and incorporation of traditional communities of interest. The District Court further failed to make any factual findings regarding Latino voter cohesion and Anglo block voting – the second and third *Gingles* factors which are commonly referred to as "racially polarized voting." Finally, although the District Court concluded that "the failure to create a seventh Latino majority district will not prevent full and equal Latino participation in the political process," the court did not make any factual findings related to the requisite "totality of the circumstances" inquiry, including the multiple and broad-ranging factors set forth in the Senate Committee Report to the 1982

amendments to the Voting Rights Act[9] and the factor of proportionality set out in *DeGrandy*, 512 U.S. at 1009-1022.

The District Court's paucity of factual inquiry and analysis resulted in erroneous legal conclusions. For example, despite the District Court's reference to "effective districts" in its ruling under the first *Gingles*

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[9] The factors identified by the Senate Committee are:

1) the history of official discrimination touching upon the right of the minority group to vote or otherwise participate in the political process;

2) the extent to which voting is racially polarized;

3) the extent to which voting practices or procedures have been used to discriminate against the minority group (including use of at-large election systems);

4) the extent to which minority candidates have been denied access to a candidate slating process;

5) the extent to which the minority group bears the effects of discrimination in areas such as education, employment and health which hinder their ability to participate in the political process;

6) whether political campaigns have been subject to racial appeals;

7) the extent to which members of the minority group have been elected to public office.

Additional factors are:

"whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs" of the minority group and "whether the policy underlying the . . . use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous."

S. Rep. No. 97-417, at 28-29.

precondition, the District Court wholly failed to consider evidence crucial to the question whether plaintiffs' proposed Latino voter majority districts, if adopted as remedy, offered Latino voters the opportunity to elect their candidate of choice. The District Court failed to make findings related to the extent of racially polarized voting and the extent to which past discrimination may hinder Latino political participation – two Senate Factors directly related to the issue of Latino ability to elect their candidate of choice – and also failed to evaluate the effect of creating districts with Latino registered voter majorities on the opportunity to elect Latino-preferred candidates.

Similarly, the District Court did not consider plaintiffs' demonstration that voting patterns in the proposed districts would yield victories for Latino-preferred candidates. Furthermore, the District Court did not make findings related to plaintiffs' showing that Latino-majority congressional and senate districts in Texas have historically elected the Latino candidate of choice when the Latino *voting age population* reaches between 50 percent and 55 percent.

Moreover, the District Court failed to consider plaintiffs' evidence regarding the strong upward trend in Latino voter registration in the preceding decade in plaintiffs' proposed districts, and the correspondingly strong likelihood that the proposed districts' Latino voter majorities would be even larger in 2001 and 2002 than they were in 2000 when the voter registration data was gathered by the Texas Secretary of State. Because the District Court did not consider or make findings related to these elements of the totality of the circumstances, there is simply no basis for the District Court's finding

that Latinos in South Texas could not comprise the majority of "effective districts."[10]

Finally, the District Court presented no analysis in support of its conclusion in the senate phase of the case that creating an extra district would be retrogressive, and offered no analysis of electoral performance of current districts or predictions of the performance of future districts.

In order to conclude that the creation of an additional Latino-majority senate district was potentially retrogressive, the court would have to conclude, first, that an additional district, overall, would reduce Latino voters' "effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 130, 141 (1976); *see also* Department of Justice Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 66 Fed. Reg. 12, 5412 (2001) ("The effective exercise of the electoral franchise usually is assessed in redistricting submissions in terms of the opportunity for minority voters to elect candidates of their choice."). The court presented no such analysis of electoral effectiveness in plaintiffs' proposed senate districts, nor did any party other than plaintiffs offer this analysis to the court.

Fed. R. Civ. P. 52(a) provides: "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately

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[10] Furthermore, the District Court generalized its "effectiveness" conclusions from the congressional phase of the litigation to the senate phase, in which no party other than plaintiffs offered evidence regarding the expected performance of plaintiffs' proposed districts.

its conclusions of law thereon . . . " The purpose of Rule 52(a) is to ensure an adequate record for appellate review. In reviewing the decision below, this court "must determine whether there is adequate support for the District Court's key findings . . . " *Hunt v. Cromartie*, 121 S. Ct. 1452, 1458 (2001). The District Court's decision in this case makes review of the "findings" impossible.

This Court has firmly established that a trial court may not present conclusions without specific findings of fact to serve as the basis for its reasoning. *See Kelley v. Everglades Drainage District*, 319 U.S. 415, 422 (1943) (vacating judgment and remanding case for "findings, stated either in the court's opinion or separately, which are sufficient to indicate the factual basis for the ultimate conclusion"). The District Court failed in its obligation under Rule 52, and failed to provide this Court with any basis from which to review its rejection of plaintiffs' claims.

CONCLUSION

According to the 2000 Census, Latinos are the largest minority group in the United States, and have become an increasingly significant presence in every region of the country. Therefore, it is increasingly important to ensure that courts apply the proper standards in assessing claims that lawmakers have responded to growth in the Latino community by unlawfully limiting the number of districts in which that community can effect electoral outcomes.

In this case, the District Court failed to apply the proper standards, and, in doing so, established new, ill-

defined, and unprecedented standards that would make section 2 inappropriately difficult to enforce. The court should have recognized that a Latino community is necessarily – as a matter of law – sufficiently numerous to constitute the "majority" in proposed additional districts if it would constitute more than half of all registered voters in those districts. Instead, the court faulted the plaintiffs for failing to meet its own unrealistic, and much higher, threshold for "majority" status. The court also should have determined that the Latino community is compact enough to merit additional districts when those districts would be as compact or more compact than other districts in the state. The District Court instead applied some unknown – again higher – standard to hold Latinos in South Texas insufficiently compact to satisfy section 2. Finally, the District Court should have carefully analyzed all of the evidence and provided findings of fact before drawing any conclusion about the "totality of the circumstances" as defined in *Gingles*. Instead, the court obligatorily invoked "totality," without ever really applying it, in denying plaintiffs' claims.

These errors set regrettable precedents in adjudicating the claims of all Voting Rights Act plaintiffs, not only in redistricting but in at-large challenges as well. More important, these are precedents that many courts could follow in addressing claims by the growing Latino

community. Thus, these errors require this Court's attention. The Court should note probable jurisdiction.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL.	§	
vs.	§	CIVIL ACTION
STATE OF TEXAS, ET AL.	§	NO. 6:01CV158
	§	(Filed Nov. 14, 2001)

This Filing Applies to: All Actions

Before HIGGINBOTHAM, Circuit Judge, HANNAH and WARD, District Judges.

PER CURIAM:

This phase of the redistricting case involves the Texas congressional districts following the 2000 census. After a period of deferral to the State of Texas as mandated in *Growe v. Emison*[1] and the failure of the State to produce a congressional redistricting plan, we are left with the "unwelcome obligation of performing in the legislature's stead."[2] We will describe the course of this litigation and explain the process by which we drew the congressional redistricting plan which we order.[3]

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[1] 507 U.S. 25 (1993).

[2] *Connor v. Finch*, 431 U.S. 407, 415 (1977).

[3] The Congressional Districts imposed by this court's Final Judgment shall bear the number 1151C, which is the next number available for public plans within the Texas Legislative Council's RedAppl 2001 computer program.

I

Voters and various officeholders filed multiple lawsuits in state and federal court challenging the districting of Texas' congressional seats and both houses of the state legislature based on the 2000 census.[4] The federal cases were consolidated into the earliest-filed federal action, *Balderas v. Texas*, No. 6:01-CV-158, before this three-judge court.[5] Pursuant to the Supreme Court's direction in *Growe*, on July 23, 2001 we deferred proceedings in federal court until October 1, 2001. We directed that the trial of any challenge to any state-adopted plan for congressional districts, or of any dispute over an appropriate plan to be adopted if the State adopted no plan, would begin on October 15, 2001. Any trials of the disputes over the districts for the state Senate and House would follow in that order. The record in each trial would rest on the trials which preceded it as well as its own. We prescribed the usual pre-trial tasks. All this was to reduce, if not avoid, any delay in the electoral process and to follow the specific command of the Supreme Court in *Growe*.

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[4] *Balderas v. Texas*, Civil No. 6:01-CV-158 (E.D. Tex.); *Mayfield v. Texas*, Civil No. 6:01-CV-218 (E.D. Tex.); *Manley v. Texas*, Civil No. 6:01-CV-231 (E.D. Tex.); *Del Rio v. Perry*, No. GN-003665 (353rd Dist. Ct., Travis County, Tex.); *Cotera v. Perry*, No. GN-101660 (353rd Dist. Ct., Travis County, Tex.); *Connolly v. Perry*, No. GN-102250 (98th Dist. Ct., Travis County, Tex.); *Associated Republicans of Texas v. Cuellar*, No.2001-26894 (281st Dist. Ct., Harris County, Tex.); *Rivas v. Cuellar*, No.2001-33760 (152nd Dist. Ct., Harris County, Tex.).

[5] Other three-judge courts had dismissed prior suits filed prematurely.

On September 12, 2001, the Texas Supreme Court determined that the Travis County trial court had dominant jurisdiction among the state cases to hear the various plaintiffs' redistricting claims and held that a state trial court in Travis County must decide the districting dispute. The Travis County court commenced trial on September 17, 2001. It heard testimony and arguments from all the parties, concluding trial on September 28, 2001.

On October 1, 2001, at the request of the state trial judge, we extended the deadline for the filing of any congressional redistricting plan to October 3, 2001. On October 3, the state trial court issued a plan, known as 1065C. No provision was made in our October 1 order for the filing of any new plan, although the state trial judge advised that he might modify the plan on or before October 10, 2001. The schedule we had provided did not contemplate major changes in the state court plan filed on October 3. On October 10, 2001, the state court nonetheless issued a new plan, known as 1089C. We immediately delayed the start of any federal trial for one week to October 22 at the request of the parties who pointed to the need for additional time given the substantial differences between the two plans of the state court. On October 19, 2001, however, the Texas Supreme Court vacated the trial court's October 10, 2001 judgment based on a violation of the parties' state constitutional rights and remanded the case to the state trial court.[6] The Texas Supreme Court also concluded that 1065C, the first plan

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[6] *Perry v. Del Rio*, No. 01-0988, 2001 WL 1285081, at *9 (Tex. Oct. 19, 2001).

of the state trial court, was not the baseline plan for this court to use, because 1065C was never adopted as a final judgment by the state trial court. The Texas Supreme Court acknowledged that the end result of the state processes left the federal courts with no choice but to proceed without the benefit of a state plan.[7]

As forecasted by the Texas Supreme Court, we proceeded to trial in Austin, Texas on October 22, 2001, without a state baseline plan in place. This court heard testimony and took evidence on congressional redistricting plans between October 22 and November 1, concluding with final argument on November 2. The parties filed post-trial briefs on November 7, 2001. After reviewing the evidence and the parties' submissions, we now turn to our decision implementing a plan for the redistricting of the Texas congressional districts based on the 2000 census.

II

Federal courts have a limited role in crafting a congressional redistricting plan where the State has failed to implement a plan. The limits are not to be found in the traces of the unconstitutional plan being replaced. "Although a court must defer to legislative judgments on reapportionment as much as possible, it is forbidden to do so when the legislative plan would not meet the special standards of population equality and racial fairness that are applicable to court-ordered plans."[8] Rather,

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[7] *Id.*

[8] *Upham v. Seamon*, 456 U.S. 37, 39 (1982) (per curiam).

the court must draw a redistricting plan according to "neutral districting factors," including, *inter alia*, compactness, contiguity, and respecting county and municipal boundaries.[9] The 1991 plan as modified in 1996 is conceded by all parties to be unconstitutional, made so by changes in population disclosed by the decennial census, if not also for other reasons. In our effort to steer the required neutral course through this political sea, we have been assisted by the many distinguished political scientists who have testified in this case.

Dr. John Alford, Rice University professor of political science, detailed in his trial testimony a process drawing upon principles of district line-drawing that stand politically neutral. We found that process, substantially parallel to our preliminary thinking and that of other courts, to be the most appropriate for our judicial task.

Our decisional process accepted the reality that, as with so many decisional processes, the sequence of decisions is critical. Starting with a blank map of Texas, we first drew in the existing Voting-Rights-Act protected majority-minority districts. We were persuaded that the next step had to be to locate Districts 31 and 32, the two new Congressional seats allotted to Texas following the 2000 census. As observed by Dr. Alford, the most natural and neutral locator is to place them where the population growth that produced the new additional districts has occurred.[10] It is self-evident that this locator is, across

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[9] *See Abrams v. Johnson*, 521 U.S. 74, 88, 98 (1997); *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

[10] We are not the first court to see the wisdom of this choice.

cases, neutral down to the immediate area, if not in the ultimate, precise fit on the ground. Here the new districts' precise landing was virtually dictated by step 1. When we sent the two new districts to the areas of greatest population growth, Dallas County and Harris County, the districts necessarily landed in the northern half of these counties, and, in the case of District 31, continuing over to Williamson County. Their landing was directed by the location of the protected majority-minority districts in southern Dallas and Harris Counties, which could not be disrupted. Use of this neutral guide was further supported by the circumstance that the Texas legislature has previously located new districts in the areas of greatest population growth.[11]

With a large part of the Texas map thus drawn, we looked to general historic locations of districts in the state, such as the districts in the Panhandle and the northeast corner of the state, the north central districts of the Red River area,[12] through the metropolitan districts and the central plains. We then drew in the remaining

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See, e.g., Johnson v. Miller, 922 F. Supp. 1556, 1563 (S.D. Ga. 1995), (discussing the decision to place Georgia's additional congressional district in high population growth area near Atlanta), *aff'd sub nom., Abrams v. Johnson*, 521 U.S. 74 (1997).

[11] *See Bush v. Vera*, 517 U.S. 952, 1003 (1996) (Stevens, J., dissenting) ("Because Texas' growth was concentrated in south Texas and the cities of Dallas and Houston, the state legislature concluded that the new congressional districts should be carved out of existing districts in those areas.").

[12] *Cf. Johnson*, 922 F. Supp. at 1565 (discussing Georgia's tradition of having four "corner districts" in its congressional plans).

districts throughout the state, emphasizing compactness, while observing the contiguity requirement.[13] We struggled to follow local political boundaries that historically have defined communities – county and city lines.[14] In the vernacular, "splits" of counties and cities in our drawing had to be a product of our neutral standards and the demands of population equality. We eschewed an effort to treat old lines as an independent locator, an effort that, in any event, would be frustrated by the population changes in the last decade. Nonetheless, the districts fell to their long-held areas, a natural result of the process we have described, much the same as the map drawn at our request by the State using Dr. Alford's neutral approach.

As we have explained, in our efforts to avoid splitting counties and cities, and in particular "double splits," or simultaneously moving populations in and out of a county between two districts, we also strove for compactness and contiguity. Doing so did much to end most of

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[13] *See Good v. Austin*, 800 F. Supp. 557, 563 (E.D. Mich. & W.D. Mich. 1992) ("In addition to serving as a check on gerrymandering compactness 'facilitates political organization, electoral campaigning, and constituent representation.' " (quoting *Karcher v. Daggett*, 462 U.S. 725, 756 (1983) (Stevens, J., concurring))).

[14] *See Karcher*, 462 U.S. at 758 (Stevens, J., concurring) ("Subdivision boundaries tend to remain stable over time. Residents of political units such as townships, cities, and counties often develop a community of interest, particularly when the subdivision plays an important role in the provision of governmental services. In addition, legislative districts that do not cross subdivision boundaries are administratively convenient and less likely to confuse the voters." (footnote omitted)).

the below-the-surface "ripples" of the 1991 plan and the myriad of submissions before us. For example, the patently irrational shapes of Districts 5 and 6 under the 1991 plan, widely-cited as the most extreme but successful gerrymandering in the country, are no more.

As a check against the outcome of our neutral principles, we asked if the resulting plan was avoidably detrimental to Members of Congress of either party holding unique, major leadership posts. We looked at three Democrats and three Republicans, consensus members of this limited group, each with substantial leadership positions in the Congress. It was plain that these Members were not harmed in their reelection prospects by this plan and that, indeed, no incumbent was paired with another incumbent or significantly harmed by the plan. We thus considered no change in our map in response to this inquiry. Doubtlessly some may see any such weighting as an incumbency factor since congressional leadership so directly correlates with seniority. This view is not without force. Nonetheless, three circumstances must also be considered. First, this correlation is no longer so complete. Second, it does not here offer purchase to one political party over another. And, finally, it reflects a traditional state interest in the power of its congressional delegation distinct from partisan affiliation.

Finally, we checked our plan against the test of general partisan outcome, comparing the number of districts leaning in favor of each party based on prior election results against the percentage breakdown statewide of votes cast for each party in congressional races. This is a

traditional last check upon the rationality of any congressional redistricting plan,[15] widely relied-upon by political scientists to test plans, if only in an approximating manner. We found that the plan is likely to produce a congressional delegation roughly proportional to the party voting breakdown across the state. It must be understood that any plan necessarily begins with a Democratic bias due to the preservation of protected majority-minority districts, all of which contain a high percentage of Democratic voters.

III

Various parties urged us to create both African-American and Latino minority districts. These districts are not required by law, as discussed in more detail below, but could be created by the State so long as race was not a predominant reason for doing so. Whether to do so is, however, a quintessentially legislative decision, implicating important policy concerns.[16] We did not avoid creating such a district. At the same time, we did not depart from our neutral factors to draw any district not required by law. To do so would render our effort to keep our thumb off the political scale an illusion.[17]

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[15] *See, e.g. Good*, 800 F. Supp. at 566-67 (using partisan fairness to assess plan drawn according to neutral principles).

[16] *See Wyche v. Madison Parish Police Jury*, 635 F.2d 1151, 1160 (5th Cir. Unit A Feb. 1981).

[17] *Cf. Abrams*, 521 U.S. at 88.

IV

Finally, to state directly what is implicit in all that we have said: political gerrymandering, a purely partisan exercise, is inappropriate for a federal court drawing a congressional redistricting map.[18] Even at the hands of a legislative body, political gerrymandering is much a bloodfeud, in which revenge is exacted by the majority against its rival. We have left it to the political arena, as we must and wisely should. We do so because our role is limited and not because we see gerrymandering as other than what it is: an abuse of power that, at its core, evinces a fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good.

V

The parties represented competing plans for redistricting the Congressional seats. We have passed by the approach by which these plans were created in favor of the approach we have described, which we found to be mandated by our position as a federal court engaging in our "delicate task with limited legislative guidance."[19]

Several parties raise Voting Rights Act arguments in support of their preferred plans. In drawing our plan, we

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[18] *See Hunt v. Cromartie*, 526 U.S. 541, 551 (1999); *see generally Davis v. Bandemer*, 478 U.S. 109, 117 n.6 (1986) (plurality opinion of White, J.); *cf. Wyche v. Madison Parish Police Jury*, 769 F.2d 265, 268 (5th Cir. 1985) ("Many factors, such as the protection of incumbents, that are appropriate in the legislative development of an apportionment plan have no place in a plan formulated by the courts.").

[19] *Abrams*, 521 U.S. at 101.

have endeavored to ensure that the plan complies with the goals of sections 2[20] and 5[21] of the Voting Rights Act.[22]

Our plan works no retrogression. We have maintained intact the existing districts, and, to the extent the boundaries have changed, as we "zeroed out" the plan, the minority populations have been either enhanced or not diminished in any meaningful way (*i.e.*, by mere fractions of percentages). Thus, although the minority populations in Districts 15, 16, and 30 represent a slightly smaller, but still overwhelming, percentage of the total populations of those districts as compared with the baseline 1991 plan as modified in 1996, we find that these changes do not result in "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."[23]

The Balderas plaintiffs argue that the congressional plan must contain seven Latino registration majority districts, within nine Latino voting age majority districts, to avoid a section 2 violation. The Martinez intervenors specifically argue for a Latino opportunity district in Dallas County to maintain compliance with section 2. Many parties, including the Texas Coalition of Black Democrats, argue for an African-American opportunity

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[20] 42 U.S.C. § 1973.

[21] 42 U.S.C. § 1973c.

[22] *See Abrams*, 521 U.S. at 90, 96.

[23] *Beer v. United States*, 425 U.S. 130, 141 (1976); *see also Abrams*, 521 U.S. at 95; *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 478 (1997).

district, generally labeled District 25, in Fort Bend and Harris Counties.

The Latino and African-American plaintiffs thus present competing positions, reflecting a political reality that they are competitors in the political process.[24] This competition finds expression in an absence of cohesive voting between Latinos and African-Americans at the point in which it is meaningfully measured, the Democratic primaries.

We find that the plaintiffs have failed to prove that vote dilution will occur in violation of section 2 of the Voting Rights Act in the absence of seven Latino citizenship majority congressional districts or an African-American opportunity district, proposed District 25, in Fort Bend and Harris Counties. The evidence did not persuade us that either Latino or African-American voting age populations are sufficiently numerous to form voting age population majorities in effective districts.[25] The plaintiffs have also not proved that Latinos and African-Americans vote cohesively as required by *Thornburg v. Gingles*[26] so as to constitute a majority in a single-member district.[27]

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[24] Several political scientists alluded to this political reality in their testimony.

[25] *See Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 852-53 (5th Cir. 1999).

[26] 478 U.S. 30, 50-51 (1986).

[27] *See Valdespino*, 168 F.3d at 852-53.

Looking first to the proposed African-American opportunity district, the Texas Coalition of Black Democrats has conceded that the evidence showed that African-Americans would not be an absolute majority of citizen voting age population in the proposed District 25. Again, the plaintiffs were unable to prove cohesive voting between Latinos and African-Americans sufficient to compel the drawing of a district in Fort Bend and Harris Counties.[28] The overwhelming evidence found to be persuasive was to the contrary.

The matter of creating such a permissive district is one for the legislature.[29] As we have explained, such an effort would require that we abandon our quest for neutrality in favor of a raw political choice. We offer no opinion as to the wisdom of an appropriate body doing so. Such arranging of voting presents a large and complex decision with profound social and political consequences. The Congress has by its enactment of voting rights laws constrained the political process and given the courts a role – to the extent of those constraints. We have no warrant to impose our vision of "proper" restraints upon the political process beyond the constraints imposed by the Constitution or the Voting Rights Act. The Supreme Court put it succinctly in *Growe*, stating that, where there

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[28] *See Growe*, 507 U.S. at 41.

[29] *See Johnson*, 922 F. Supp. at 1567 ("Since political considerations pervade the redistricting task, the Court feels that any permanent footprint left on Georgia's political landscape . . . should be left to those elected to make such decisions.").

has been no showing establishing the "three *Gingles* prerequisites," then under section 2 of the Voting Rights Act "there neither has been a wrong nor can be a remedy."[30] A month later, the court stated even more directly that, "[o]f course, the federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law."[31]

In sum, these arguments so ably presented by Morris Overstreet, African-American attorney and former state official and candidate for elective office, and others are directed to the wrong forum, however much we may personally admire the arguments. It bears mention that our plan has hardly left a bleak terrain. In District 25 of our plan, the combined African-American and Latino voting age population increased to a 52.3 majority. In the practical world, this percentage will dominate the Democratic primary in a district that has consistently elected a Democratic congressman. This is, then, in a real sense, a minority district produced by our process that enhances the elective prospects of a minority, albeit not wholly the district sought.

As for the proposed Latino opportunity districts, the evidence shows that the Latino population is not sufficiently compact or numerous to support another, effective majority Latino citizenship district in Texas, in Dallas County or in South Texas.[32] We find that, under the

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[30] 507 U.S. at 41.

[31] *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993).

[32] *See Growe*, 507 U.S. at 39-40; *Gingles*, 478 U.S. at 50-51; *NAACP v. Fordice*, 252 F.3d 361, 365-67 (5th Cir. 2001).

totality of the circumstances, the failure to create seven such districts will not prevent full and equal Latino participation in the political process. It bears mention that our insistence upon compactness has increased the Latino force in District 24, a result supported by Congresswoman Eddie Bernice Johnson in her testimony at trial.

The Valdez-Cox plaintiffs also urge that Webb and Hidalgo Counties be left whole. We heard powerful arguments from the witness stand and counsel in opposition to a splitting of Hidalgo County in South Texas, and our neutral standards stood against such a county split. That standard was ultimately overridden as to Hidalgo County by the mandate of population equality under the principle of one-man, one-vote, and the existence of surrounding protected majority-minority districts. It is an ugly fact that the law's insistence on absolute population equality in court-drawn plans has the perverse effect of splitting counties and cities, when a tolerance of greater deviation would not demand such undesirable divisions. The split here of Hidalgo County is a fit example.[33] Webb County was not caught in this squeeze and remains wholly intact in District 23.

VI

There being no reason for delay, we direct entry of final judgment in this case pursuant to Federal Rule of Civil Procedure 54(b).

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[33] We endeavored to and did respect the municipal boundaries of McAllen, a major population center of Hidalgo County.

So **ordered** and **signed** this 14th day of November, 2001.

/s/ Patrick E. Higginbotham
PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT JUDGE

/s/ John Hannah, Jr.
JOHN HANNAH, JR.
UNITED STATES DISTRICT JUDGE

/s/ T. John Ward
T. JOHN WARD
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL.	§	
Vs.	§	NO. 6:01CV158
	§	
STATE OF TEXAS, ET AL.	§	

This filing applies to: All actions

FINAL JUDGMENT

(Filed Nov. 14, 2001)

On the 22d day of October, the above referenced civil action came on for trial. The court heard evidence and argument and considered the parties' post-trial briefing. For the reasons expressed in the court's *per curiam* decision issued today, the court renders judgment declaring that the existing congressional districts in the State of Texas are unconstitutionally malapportioned and adopting Plan 1151C as the remedial congressional redistricting plan for the State of Texas.

The Texas Legislative Council's statistical package for Plan 1151 C is attached as Exhibit A to this judgment and is incorporated by reference. The maps associated with Plan 1151C are attached as Exhibit B to this judgment and are incorporated by reference.

All relief not granted is denied. Costs of court are taxed against the State of Texas.

So ORDERED and SIGNED this 14th day of November, 2001.

/s/ Patrick E. Higginbotham
PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT JUDGE

/s/ John Hannah, Jr.
JOHN HANNAH, JR.
UNITED STATES DISTRICT JUDGE

/s/ T. John Ward
T. JOHN WARD
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, GILBERTO Z. TORRES and TEXAS LULAC, Plaintiffs, vs. STATE OF TEXAS; RICK PERRY, in his official capacity as Governor of the State of Texas; BILL RATLIFF, in his official capacity as Acting Lieutenant Governor of Texas; JAMES "PETE" LANEY, in his official capacity as Speaker of the Texas House of Representatives; GEOFFREY S. CONNOR in his official capacity as Acting Secretary of State for the State of Texas; MOLLY BETH MALCOLM, in her official Capacity as Chair of the Texas Democratic Party, SUSAN WEDDINGTON, in her official capacity as Chair of the Texas Republican Party; JOHN CORNYN, in his official capacity as a member of the Texas Legislative Redistricting Board; Defendant CAROL KEATON RYLANDER, in her official capacity as a member of the Texas Legislative Redistricting Board; Defendant DAVID DEWHURST, in his official capacity as a member of the Texas Legislative Redistricting Board, Defendants.	§	CIVIL ACTION NO. 6:01-CV158 (Filed Dec. 14, 2001)

NOTICE OF APPEAL

Notice is hereby given that Simon Balderas, Gerald Torres and the Texas League of United Latin American Citizens, plaintiffs in the above named case, hereby appeal to the United States Supreme Court, pursuant to 28 U.S.C. § 1253, from the order and judgement adopting a congressional redistricting plan for the State of Texas entered in this action on the 14th day of November, 2001 and the order and judgement affirming the Texas Senate redistricting plan entered in this action on the 28th day of November, 2001.

DATED: December 13, 2001

Respectfully submitted,

By: /s/ Nina Perales
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[Certificate Of Service Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL.	§	CIVIL ACTION
vs.	§	NO. 6:01CV158
STATE OF TEXAS, ET AL.	§	

This Filing Applies to: All Actions

Before HIGGINBOTHAM, Circuit Judge, HANNAH and WARD, District Judges.

(Filed November 28, 2001)

PER CURIAM:

This phase of the case involves the redistricting of the Texas State Senate following the 2000 census. Following the failure of the state legislature to implement a redistricting plan for the Senate, the Legislative Redistricting Board adopted a plan on July 24, 2001, to redistrict the 31 Senate seats.[1] Because Texas is a "covered" jurisdiction under section 5 of the Voting Rights Act, the State then submitted this plan to the United States Department of Justice for preclearance.[2] On October 15, 2001, the United States Department of Justice informed the Texas Secretary of State that the LRB Senate plan, known as 1188S, had been precleared pursuant to section 5 of the Voting Rights Act. This three-judge court then heard evidence on November 5 and 6, 2001, supplementing the evidence taken at the congressional redistricting

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[1] *See* Tex. Const. art. III, § 28.

[2] *See* 42 U.S.C. § 1973c.

trial and challenging the legality of the LRB Senate plan, 1188S, under the Equal Protection Clause and the Voting Rights Act. We will first describe the course of this litigation and then address the parties' challenges to the LRB Senate plan. We repeat in part our description in our opinion adopting a congressional redistricting plan.[3]

I

Voters and various officeholders filed multiple lawsuits in state and federal court challenging the districting of Texas' congressional seats and both houses of the state legislature based on the 2000 census.[4] The federal cases were consolidated into the earliest-filed federal action, *Balderas v. Texas*, No. 6:01-CV-158, before this three-judge court.[5]

The Texas Constitution requires that the Texas legislature, "at its first regular session after the publication of each United States decennial census, apportion the state

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[3] We filed a plan for congressional districts with an opinion on November 14, 2001. We directed entry of a final judgment on those claims at that time.

[4] *Balderas v. Texas*, Civil No. 6:01-CV-158 (E.D. Tex.); *Mayfield v. Texas*, Civil No. 6:01-CV-218 (E.D. Tex.); *Manley v. Texas*, Civil No. 6:01-CV-231 (E.D. Tex.); *Del Rio v. Perry*, No. GN-003665 (353rd Dist. Ct., Travis County, Tex.); *Cotera v. Perry*, No. GN-101660 (353rd Dist. Ct., Travis County, Tex.); *Connolly v. Perry*, No. GN-102250 (98th Dist. Ct., Travis County, Tex.); *Associated Republicans of Texas v. Cuellar*, No. 2001-26894 (281st Dist. Ct., Harris County, Tex.); *Rivas v. Cuellar*, No.2001-33760 (152nd Dist. Ct., Harris County, Tex.).

[5] Other three-judge courts had dismissed prior suits filed prematurely.

into senatorial and representative districts."[6] The Constitution also provides that, "[i]n the event the Legislature shall at any such first regular session following the publication of a United States decennial census, fail to make such apportionment, same shall be done by the Legislative Redistricting Board of Texas," which is "composed of five (5) members, as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office."[7] In May 2001, the 77th Legislature adjourned *sine die* without enacting Senate and House redistricting plans and so the LRB convened and adopted Senate and House redistricting plans on July 24, 2001. Under state law, these plans, "executed and filed with the Secretary of State, shall have force and effect of law."[8]

Pursuant to the Supreme Court's direction in *Growe v. Emison*,[9] on July 23, 2001 we deferred proceedings in federal court until October 1, 2001. Proceedings on the congressional redistricting concluded on November 2, 2001 and our order issued on November 14, 2001.

After a pre-trial conference on November 2, 2001, trial on the Senate plan commenced on November 5, concluding with arguments on November 6. Post-trial briefs were submitted on November 9, 2001. After reviewing the evidence and the parties' submissions, we

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[6] Tex. Const. art. III, § 28.

[7] *Id.*

[8] *Id.*

[9] 507 U.S. 25 (1993).

now turn to our decision on the challenges presented to the state Senate redistricting plan adopted by the LRB and precleared by the Justice Department.

II

Federal courts have a limited role in considering challenges to precleared legislatively-adopted redistricting plans.[10] The Supreme Court has made clear that "[a] State should be given the opportunity to make its own redistricting decisions so long as that is practically possible and the State chooses to take the opportunity," and, "[w]hen it does take the opportunity, the discretion of the federal court is limited except to the extent that the plan itself runs afoul of federal law."[11] We may reject the State's apportionment plan only insofar as it is deficient as a matter of federal law and may only act remedially to correct any such deficiency.[12]

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[10] *See, e.g., Voinovich v. Quilter*, 507 U.S. 146, 156 (1993).

[11] *Lawyer v. Dep't of Justice*, 521 U.S. 567, 576-77 (1997); *see also Upham v. Seamon*, 456 U.S. 37, 40 (1982) (per curiam) (holding that a three-judge court cannot "simply substitute[ ] its own reapportionment preferences for those of the state legislature").

[12] *Cook v. Luckett*, 735 F.2d 912, 919 (5th Cir. 1984); *see also Voinovich*, 507 U.S. at 156 ("[T]he federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law.").

To the extent the plaintiffs raise claims that ask that this court enforce state law against the State, they are barred by the Eleventh Amendment, and this court has no jurisdiction to hear them, whether for injunctive or for declaratory relief. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106, 121 (1984); *Watson v. Texas*, 261 F.3d 436, 440-41 (5th Cir. 2001); *Earles*

III

The parties presented competing plans for redistricting the Senate seats, but, as we have explained, our task is simply to evaluate whether the precleared LRB Senate plan runs afoul of the statutory and constitutional law, specifically the Equal Protection Clause of the Fourteenth Amendment and sections 2[13] and 5[14] of the Voting Rights Act.

A

Several plaintiffs urge that the LRB plan violates the Voting Rights Act. The Balderas plaintiffs argue that section 2 of the Voting Rights Act requires that we draw in a seventh Latino citizenship majority district in South Texas. The Valdez-Cox plaintiffs argue that a Latino majority district should be created in Dallas and Tarrant Counties. The Mayfield plaintiffs challenge the LRB plan's Senate districts in Dallas, Harris, Tarrant, and Jefferson Counties, seemingly arguing for the creation of minority "influence" districts under section 2 of the Voting Rights Act. The Mayfield plaintiffs also argue that the LRB plan impermissibly "packs" existing majority-minority districts at the expense of neighboring minority districts with less than a majority-minority population. Amicus curiae Texas NAACP argues for a third African-

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v. State Bd. of Certified Public Accountants of La., 139 F.3d 1033, 1039-40 (5th Cir. 1998); *Hays County Guardian v. Supple*, 969 F.2d 111, 125 (5th Cir. 1992).

[13] 42 U.S.C. § 1973.

[14] 42 U.S.C. § 1973c.

American opportunity district in Harris County and argues that the LRB Senate plan dilutes minorities in certain "influence districts," 4, 12, and 15.

Looking first to the Balderas and Valdez-Cox plaintiffs' claims, we must reject these claims for reasons substantially similar to those given in our decision in the congressional redistricting case. The record before us demonstrates that the Latino population is not sufficiently compact or numerous to support another, effective majority Latino citizenship district in Dallas and Tarrant Counties or in South Texas.[15] We further find that, under the totality of the circumstances, the failure to create a seventh Latino majority district will not prevent full and equal Latino participation in the political process. Rather, creating such a district would risk giving rise to retrogression in the existing Latino majority districts. We conclude that the [sic] these plaintiffs have failed to prove that section 2 of the Voting Rights Act requires any correction to the LRB Senate plan based on allegations of Latino vote dilution.

To the extent the Mayfield plaintiffs and amicus curiae Texas NAACP invite us to recognize and sustain a challenge to the LRB plan based on minority "influence districts," we have no warrant to do so.[16]

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[15] *See Growe*, 507 U.S. at 39-40; *Thornburgh* [sic] *v. Gingles*, 478 U.S. 30, 50-51 (1986); *NAACP v. Fordice*, 252 F.3d 361, 365-67 (5th Cir. 2001).

[16] *See Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 852-53 (5th Cir. 1999); *see also Johnson v. De Grandy*, 512 U.S. 997, 1008-09 (1994) (declining to decide whether "influence district" claims are cognizable under section 2 and citing three prior cases in which the Court similarly declined to so decide).

Texas NAACP has similarly failed to identify in the record a violation of Section 2 of the Voting Rights Act so as to compel the creation by this court of an African-American opportunity district in Harris County. The new minority opportunity districts in the Texas NAACP's proposed Plan 1219S, District 12 in Dallas and Tarrant Counties and District 15 in Fort Bend and Harris Counties, rely on supposed coalitions of Latino and African-American populations to achieve majority-minority populations. Amicus points to suggestions that Latinos and African-Americans have voted cohesively in certain Democratic primaries. The evidence before us, however, does not persuade us that Latinos and African-Americans vote cohesively as required by *Thornburg v. Gingles*[17] so as to constitute a majority in a single-member district.[18]

We are also not persuaded by the Mayfield plaintiffs' packing claims. The addition of minority, particularly Latino, populations to several districts was necessitated by the one-man, one-vote requirement and non-retrogression concerns pursuant to section 5 of the Voting Rights Act. To the extent minority populations were added to majority-minority districts under the LRB plan, such as the movement of Latinos from El Paso County between former District 29 and new District 19, the evidence demonstrates that these shifts in population were in keeping with the demands of the Equal Protection Clause and the Voting Rights Act.

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[17] 478 U.S. 30, 50-51 (1986).

[18] *See Growe*, 507 U.S. at 41; *Valdespino*, 168 F.3d at 852-53.

To the extent that we have jurisdiction to do so we find that there is no retrogression in violation of section 5 of the Voting Rights Act in the LRB Senate plan. As we have noted, the Justice Department has precleared the LRB plan.

B

The Mayfield plaintiffs argue that the LRB plan is unconstitutional because its population deviation violates the Equal Protection Clause. We note first that the LRB plan presents a total deviation under ten percent. As such, the plaintiffs cannot establish a *prima facie* case of vote dilution in violation of Equal Protection Clause, and the State is not required to justify minor variations in various districts from the ideal Senate district population.[19]

The Mayfield plaintiffs, in attempting to meet their burden of proof, contend that the LRB plan is unconstitutional under *Roman v. Sincock*[20] because it is not "free from any taint of arbitrariness or discrimination."[21]

Showing only that smaller population deviations were possible is insufficient to prove a violation of the Equal Protection Clause.[22] We cannot say that this plan, which satisfies the Voting Rights Act and contains less than 10% total deviation is so without reason as to violate

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[19] *Chen v. City of Houston*, 206 F.3d 502, 522 (5th Cir. 2000).

[20] 377 U.S. 695 (1964).

[21] *Id.* at 710.

[22] *See id.* at 1221 [sic] (citing authorities).

the Equal Protection Clause. It is plainly the product of partisan line-drawing.

C

The Valdez-Cox plaintiffs also urge that Hidalgo County and particularly the City of McAllen be left whole in contrast to the LRB Senate plan, which splits Hidalgo and McAllen between Districts 20 and 27. They argue that splitting these political subdivisions violates the narrowly-tailored approach mandated by Supreme Court case law dealing with court-ordered plans or modifications targeted at correcting Voting Rights Act or constitution violations.[23] The LRB plan, however, is not a court-ordered remedial plan, so these arguments are inapposite. On the evidence presented, the splitting of Hidalgo County in the LRB plan does not violate the Voting Rights Act. Whether the decision to split Hidalgo County is wise or unwise as a matter of legislative policy is not for us to say.

D

The Mayfield plaintiffs also urge a federal due process challenge to the LRB plan. They have not briefed this matter in their post-trial briefs, but argued at trial that the violation arises from the LRB's failure to follow its own guidelines in adopting its plan. This issue has not been preserved and, in any event, our reading of the

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[23] *See Upham*, 456 U.S. at 43; *Whitcomb v. Chavis*, 403 U.S. 124, 160-61 (1973).

guidelines and the proceedings before the LRB disclose no due process violation.

E

Various parties argue that certain districts, in particular Senate District 17, are unconstitutional as purposeful racial discrimination in violation of the Equal Protection Clause. We find no such violation. As one of the political scientists testified, "it isn't pretty," it's just political gerrymandering.

IV

We conclude that there is no meritorious challenge, based on federal constitutional or statutory law to the LRB Senate plan, 1188S, nor any state law challenge over which this three-judge court has jurisdiction. As such, we hold that 1188S, as enacted into law by the LRB, governs state Senate apportionment for the State of Texas following the 2000 census. There being no reason for delay, we direct entry of final judgment in this case pursuant to Federal Rule of Civil Procedure 54(b).

Each member of this panel joins in this ruling but reserves the right to express more fully their separate views in a later opinion.

So **ordered** and **signed** this 28th day of November, 2001.

/s/ Patrick E. Higginbotham
PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT JUDGE

/s/ John Hannah, Jr.
JOHN HANNAH, JR.
UNITED STATES DISTRICT JUDGE

/s/ T. John Ward
T. JOHN WARD
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL.	§	CIVIL ACTION
vs.	§	NO. 6:01CV158
STATE OF TEXAS, ET AL.	§	
This Filing Applies to: All Actions		

FINAL JUDGMENT

(Filed November 28, 2001)

On the 5th day of November, the above referenced civil action came on for trial. The court heard evidence and argument and considered the parties' post-trial briefing. For the reasons expressed in the court's *per curiam* decision issued today, the court renders judgment for the State of Texas and affirm [sic] that Plan 1188S is the legal Senate districting plan for the State of Texas.

All relief not granted is denied. Costs of court are taxed against the State of Texas.

So **ordered** and **signed** this 28th day of November, 2001.

/s/ Patrick E. Higginbotham
PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT JUDGE

/s/ John Hannah, Jr.
JOHN HANNAH, JR.
UNITED STATES DISTRICT JUDGE

/s/ T. John Ward
T. JOHN WARD
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL.	§	CIVIL ACTION
VS.	§	NO. 6:01 CV 158
	§	
STATE OF TEXAS, ET AL.	§	(Filed Nov. 30, 2001)

This Filing Applies to: All Actions

JOHN HANNAH, JR., Chief District Judge, having concurred in the judgment, writes further.

I have concurred with the legal conclusion reached by my brethren in regard to the House and Senate Redistricting Plan. I write separately to express my shock at the drawing of districts by the State of Texas. The dominant political party treated all members of the opposing party as if they were "enemies of the State" instead of respected state leaders, many with a great wealth of governmental knowledge and ability that has and could inure to the benefit of Texas.

The State has obviously ignored traditional redistricting principles in favor of political expediency. The State's lack of respect for political subdivisions is evident. Two examples from the State's Senate Plan will suffice although many examples from the House and Senate Plan could be cited.

El Paso County's population according to the 2000 Census is 679,622. The population figure for an ideal senate district is 672,639. A respect for political subdivisions would suggest making El Paso County into a single

senatorial district. However, the State unnecessarily splits El Paso County into Districts 29 and 19. It places the residents of southern El Paso County in District 19 along with 335,367 persons from Bexar County, hundreds of miles away and of a different community of interest.

Even more offensive is Senate District 17, a district described even by the State's own expert witness as weird, odd and bizarre. Stretching over 180 miles from University Park in Harris County to the Louisiana border, it is barely a mile wide in spots, and requires travel by boat to meet the standards of contiguity. Starting in University Park and Bellaire, in Harris County, Anglo enclaves within the borders of the City of Houston, it snakes west through a narrow corridor to another Anglo enclave of middle and upper middle class homes in the western suburbs of Houston, out to the edge of Anglo Katy. It wends its way south into another exclusive Anglo stronghold in the First Colony area of Fort Bend County, carefully avoiding the sections of Black population in bordering Missouri City while retaining the Anglo populations of Missouri City. After wending its way south through the Anglo portions of Fort Bend County, it reaches into Brazoria County. It then veers northeast along a narrow strip of Galveston County, taking in the Anglo community of Jamaica Beach and a narrow part of the City of Galveston which borders the beach, but draws its line at the neighborhood of Galveston which contain a large Black population. The district continues its northeast direction along the coast of Chambers County, where its main inhabitants are the birds in the Anahuac National Wildlife Refuge, the population maps showing zero for human inhabitants in District 17's section of

Chambers County. Travel from the Galveston portion of this district into the Chambers County portion of this district, if eschewing a route into District 4, requires a trip on the Bolivar Ferry onto the Bolivar Peninsula. The District ends in Jefferson County, at the border of Louisiana. In Jefferson County, it splits the community of Port Arthur from its suburbs and, more importantly from Beaumont. The district lines show a careful encompassment of the small black community within Port Arthur while rejecting the larger Black bordering community of Beaumont.

Examining District 17, referred to in the trial of this case as the "fish hook," we note its extremely irregularity on its face and deplore the State's rejection of traditional redistricting principles such as compactness, respect for political subdivisions, and community of interests. 6 county lines are split by this district and no whole county is included. Further, District 17 splits 17 or 18 towns and cities in its meander through the coastal plane of southeastern Texas.

The evidence concerning the lack of regard for traditional communities of interest was compelling. Jefferson County residents testified that they are often adverse to residents of Harris County on issues of air pollution and water rights and that the working class communities of Jefferson County have nothing in common with the middle and upper middle class suburbs of Houston or with exclusive University Park. There was testimony that Jefferson County has been wholly within one senate district for the last 168 years.

Further, evidence showed that District 17 as it now stands, was introduced by a last minute amendment, and voted on by the Legislative Redristricting Board over the strong objection of Lieutenant Governor Ratliff who deplored the lack of fairness inherent in voting on an amendment which the public had not have [sic] a chance to see.

All this being said, the federal courts have a limited role in considering challenges to precleared, legislatively-adopted redistricting plans. We may not substitute our judgment for that of the Legislature, in this case, the Legislative Redistricting Board, unless we find that the plan runs afoul of federal law. The State may engage in political gerrymandering even if it "so happens that the most loyal Democrats happen to be black Democrats and even if the State were conscious of that fact."[1] However, I concur with the legal conclusion that plaintiffs have failed to meet their evidentiary burden of showing that the Texas Senate plan violates the Constitution or laws of the United States, as distasteful as portions of it may be.

SIGNED this 30th day of November, 2001.

/s/ John Hannah, Jr.
JOHN HANNAH, JR.
Chief District Judge

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[1] *Hunt v. Cromartie*, 526 U.S. 541, 551 (1999).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL.	§	
	§	NO. 6:01CV158
Vs.	§	
	§	
STATE OF TEXAS, ET AL.	§	

This filing applies to: All actions

AMENDED JUDGMENT

(Filed Jan. 18, 2002)

We grant the state's Rule 59 motion to amend judgment (#472) in part. We amend our final judgment in the Senate case (#460) to read as follows:

On the 5th day of November, 2001, the above-referenced civil action came on for trial. The court heard evidence and argument and considered the parties' post-trial briefing. For the reasons previously expressed in the court's *per curiam* decision, the court renders judgment for the State of Texas and affirms that Plan 1988 [sic] is the legal Senate districting plan for the State of Texas.

All relief not granted is denied. Costs of court are taxed against the party incurring same.

So Ordered and Signed this 18th day of January, 2002.

/s/ Patrick E. Higginbotham
PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT
JUDGE

/s/ John Hannah, Jr.
JOHN HANNAH, JR.
UNITED STATES DISTRICT
JUDGE

/s/ T. John Ward
T. JOHN WARD
UNITED STATES DISTRICT
JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, GILBERTO Z. TORRES and TEXAS LULAC,	§	
Plaintiffs,	§	CIVIL ACTION
vs.	§	NO. 6:01-CV-158
STATE OF TEXAS; RICK PERRY, in his official capacity as Governor of the State of Texas; BILL RATLIFF, in his official capacity as Acting Lieutenant Governor of Texas; JAMES "PETE" LANEY, in his official capacity as Speaker of the Texas House of Representatives; GEOFFREY S. CONNOR in his official capacity as Acting Secretary of State for the State of Texas; MOLLY BETH MALCOLM, in her official Capacity as Chair of the Texas Democratic Party, SUSAN WEDDINGTON, in her official capacity as Chair of the Texas Republican Party; JOHN CORNYN, in his official capacity as a member of the Texas Legislative Redistricting Board; Defendant CAROL KEATON RYLANDER, in her official capacity as a member of the Texas Legislative Redistricting Board; Defendant DAVID DEWHURST, in his official capacity as member of the Texas Legislative Redistricting Board.	§	(Filed Feb. 1, 2002)
Defendants.	§	

PLAINTIFFS' AMENDED NOTICE OF APPEAL

Notice is hereby given that Simon Balderas, Gerald Torres and the Texas League of United Latin American Citizens, plaintiffs in the above named case, hereby appeal to the United States Supreme Court, pursuant to 28 U.S.C. § 1253, from the order and judgement adopting a congressional redistricting plan for the State of Texas entered in this action on the 14th day of November, 2001 and the amended judgement affirming the Texas Senate redistricting plan entered in this action on the 18th day of January, 2002.

DATED: January 29, 2002

Respectfully submitted,

By: /s/ Nina Perales
NINA PERALES
State Bar No. 24005046
Attorney-in-Charge

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and Educational Fund
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OF COUNSEL:
ALBERT H. KAUFFMAN

[Certificate Of Service Omitted In Printing]

42 U.S.C. § 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Federal Rule of Civil Procedures 52

FINDINGS BY THE COURT; JUDGMENT ON PARTIAL FINDINGS

(a) **Effect.** In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.

* * *

POPULATION AND GENERAL ELECTION HISTORY
CONGRESSIONAL DISTRICTS - PLAN 01123C

PLAN 01123C DIST		2000 CENSUS: DEVIATION		TOTAL POPULATION: TOTAL	ANGLO	BLACK	HISP	B+H	OTHER	% POPULATION: %A	%B	%H	%B+H	%O	GENERAL ELECTION HISTORY*: -YEAR-	---VOTER REG--- TOTAL	%SPAN	----TURNOUT---- TOTAL	TO/VR	STATEWIDES** %DEM	%REP
1	Total	0	(0.00%)	651,619	476,557	116,838	49,191	165,155	9,907	73.1	17.9	7.5	25.3	1.5	2000	351,959	1.7	225,528	64.1%	39.2	60.8
	VAP			486,738	368,456	81,311	30,165	110,989	7,293	75.7	16.7	6.2	22.8	1.5	1998	346,553	1.4	148,174	42.8%	48.0	52.0
2	Total	0	(0.00%)	651,619	452,631	102,813	81,934	183,536	15,452	69.5	15.8	12.6	28.2	2.4	2000	334,789	4.4	216,692	64.7%	40.1	59.9
	VAP			493,947	356,913	71,678	54,029	125,023	12,011	72.3	14.5	10.9	25.3	2.4	1998	320,836	4.0	137,708	42.9%	48.2	51.8
	Total	0	(0.00%)	651,619	405,828	73,553	115,951	188,003	57,788	62.3	11.3	17.8	28.9	8.9	2000	310,330	6.2	208,097	67.1%	30.9	69.1
	VAP			463,246	301,793	47,170	73,719	120,144	41,309	65.1	10.2	15.9	25.9	8.9	1998	282,931	5.4	109,547	38.7%	28.7	71.3
4	Total	+ 12	(+0.00%)	651,631	522,841	51,757	55,376	106,491	22,299	80.2	7.9	8.5	16.3	3.4	2000	343,858	3.1	233,239	67.8%	27.1	72.9
	VAP			468,907	385,171	34,685	34,128	68,517	15,219	82.1	7.4	7.3	14.6	3.2	1998	304,968	2.7	129,204	42.4%	31.8	68.2
5	Total	0	(0.00%)	651,619	422,620	105,246	110,899	214,854	14,145	64.9	16.2	17.0	33.0	2.2	2000	321,206	6.4	203,315	63.3%	38.6	61.4
	VAP			476,821	326,380	71,711	69,069	140,188	10,253	68.4	15.0	14.5	29.4	2.2	1998	301,461	5.6	121,459	40.3%	41.4	58.6
6	Total	0	(0.00%)	651,619	448,846	69,324	89,449	157,247	45,526	68.9	10.6	13.7	24.1	7.0	2000	314,845	5.7	225,283	71.6%	30.9	69.1
	VAP			478,066	341,584	45,548	58,674	103,478	33,004	71.5	9.5	12.3	21.6	6.9	1998	298,257	5.1	118,299	39.7%	30.8	69.2
7	Total	0	(0.00%)	651,619	432,266	41,235	127,119	166,812	52,541	66.3	6.3	19.5	25.6	8.1	2000	335,277	8.2	244,428	72.9%	24.8	75.2
	VAP			473,800	326,414	27,168	83,149	109,475	37,911	68.9	5.7	17.5	23.1	8.0	1998	299,607	7.1	131,560	43.9%	23.6	76.4
8	Total	0	(0.00%)	651,619	520,021	37,561	72,659	109,457	22,141	79.8	5.8	11.2	16.8	3.4	2000	362,487	5.5	250,165	69.0%	22.7	77.3
	VAP			462,748	377,687	24,456	45,675	69,758	15,303	81.6	5.3	9.9	15.1	3.3	1998	322,768	4.9	129,787	40.2%	23.8	76.2
9	Total	0	(0.00%)	651,619	381,555	167,116	85,897	251,195	18,869	58.6	25.6	13.2	38.5	2.9	2000	344,371	6.3	226,577	65.8%	49.2	50.8
	VAP			472,030	291,352	113,252	55,089	167,377	13,301	61.7	24.0	11.7	35.5	2.8	1998	338,313	5.6	135,701	40.1%	56.1	43.9
10	Total	+ 1	(+0.00%)	651,620	322,726	77,222	215,689	289,774	39,120	49.5	11.9	33.1	44.5	6.0	2000	324,986	18.0	220,111	67.7%	53.7	46.3
	VAP			500,983	271,947	52,779	145,753	196,958	32,078	54.3	10.5	29.1	39.3	6.4	1998	285,851	17.5	126,955	44.4%	57.2	42.8
11	Total	-3	(0.00%)	651,616	416,411	103,218	114,644	214,628	20,577	63.9	15.8	17.6	32.9	3.2	2000	319,773	9.5	205,641	64.3%	35.6	64.4
	VAP			469,333	318,713	66,367	70,745	135,635	14,985	67.9	14.1	15.1	28.9	3.2	1998	293,848	9.0	120,211	40.9%	41.0	59.0

* In most contests, election results do not include results from third party, independent, or write-in candidates. Complete official results are maintained by the office of the secretary of state.
** "Statewides" is a weighted average of the results of all general election statewide contested contests.

Admitted into the trial record as Balderas Pl. Exh. 114 in the congressional phase of the case.
Request:14634

POPULATION AND GENERAL ELECTION HISTORY
CONGRESSIONAL DISTRICTS - PLAN 01123C

PLAN 01123C DIST		2000 CENSUS: TOTAL POPULATION: DEVIATION		TOTAL	ANGLO	BLACK	HISP	B+H	OTHER	% POPULATION: %A	%B	%H	%B+H	%O	GENERAL ELECTION HISTORY*: -YEAR-	---VOTER REG--- TOTAL	%SPAN	----TURNOUT---- TOTAL	TO/VR	STATEWIDES** %DEM	%REP
12	Total	0	(0.00%)	651,619	419,040	66,433	145,601	210,191	22,388	64.3	10.2	22.3	32.3	3.4	2000	294,332	9.7	197,109	67.0%	38.1	61.9
	VAP			477,525	325,463	45,204	91,600	135,920	16,142	68.2	9.5	19.2	28.5	3.4	1998	279,904	8.8	116,224	41.5%	40.8	59.2
13	Total	+4	(+0.00%)	651,623	494,009	37,609	104,166	140,522	17,092	75.8	5.8	16.0	21.6	2.6	2000	347,952	7.3	221,957	63.8%	30.6	69.4
	VAP			479,588	378,407	26,162	63,262	88,935	12,246	78.9	5.5	13.2	18.5	2.6	1998	335,502	6.6	149,202	44.5%	38.8	61.2
14	Total	+2	(+0.00%)	651,621	420,536	64,521	139,493	202,494	28,591	64.5	9.9	21.4	31.1	4.4	2000	356,231	12.4	264,682	74.3%	35.7	64.3
	VAP			469,907	316,524	44,221	89,446	133,040	20,343	67.4	9.4	19.0	28.3	4.3	1998	329,242	12.0	132,134	40.1%	38.3	61.7
15	Total	-3	(0.00%)	651,616	172,543	20,590	450,881	469,738	9,335	26.5	3.2	69.2	72.1	1.4	2000	315,386	55.0	164,595	52.2%	52.0	48.0
	VAP			445,737	136,497	14,852	288,729	302,765	6,475	30.6	3.3	64.8	67.9	1.5	1998	299,106	53.8	96,916	32.4%	54.9	45.1
16	Total	0	(0.00%)	651,619	113,852	23,204	505,582	525,530	12,237	17.5	3.6	77.6	80.6	1.9	2000	295,654	64.7	144,571	48.9%	57.0	43.0
	VAP			445,452	90,129	15,042	332,699	346,304	9,019	20.2	3.4	74.7	77.7	2.0	1998	270,617	63.4	91,247	33.7%	60.3	39.7
17	Total	+3	(+0.00%)	651,622	490,085	24,864	126,528	150,092	11,445	75.2	3.8	19.4	23.0	1.8	2000	359,853	10.9	240,919	66.9%	28.5	71.5
	VAP			489,160	384,884	16,817	79,564	95,881	8,395	78.7	3.4	16.3	19.6	1.7	1998	342,337	10.4	167,591	49.0%	36.8	63.2
18	Total	0	(0.00%)	651,619	137,159	296,483	192,124	485,049	29,411	21.0	45.5	29.5	74.4	4.5	2000	307,434	10.8	188,619	61.4%	71.6	28.4
	VAP			467,015	117,155	206,252	123,198	327,528	22,332	25.1	44.2	26.4	70.1	4.8	1998	300,481	9.4	112,351	37.4%	72.8	27.2
19	Total	-2	(0.00%)	651,617	421,865	32,875	186,089	217,468	12,284	64.7	5.0	28.6	33.4	1.9	2000	346,674	18.5	217,852	62.8%	23.8	76.2
	VAP			471,863	326,921	21,301	115,080	135,837	9,105	69.3	4.5	24.4	28.8	1.9	1998	335,851	17.3	148,649	44.3%	29.8	70.2
20	Total	0	(0.00%)	651,619	195,596	37,668	402,464	436,803	19,220	30.0	5.8	61.8	67.0	2.9	2000	326,735	51.7	177,725	54.4%	50.0	50.0
	VAP			472,615	159,352	26,042	274,092	298,635	14,628	33.7	5.5	58.0	63.2	3.1	1998	305,670	50.5	97,497	31.9%	50.6	49.4
	Total	0	(0.00%)	651,619	507,811	19,513	98,007	116,505	27,303	77.9	3.0	15.0	17.9	4.2	2000	408,101	9.9	304,279	74.6%	27.4	72.6
	VAP			475,896	379,253	12,729	65,273	77,537	19,106	79.7	2.7	13.7	16.3	4.0	1998	351,959	9.2	174,658	49.6%	29.6	70.4
22	Total	-1	(0.00%)	651,618	288,719	112,461	158,405	267,797	95,102	44.3	17.3	24.3	41.1	14.6	2000	289,198	11.1	192,546	66.6%	36.6	63.4
	VAP			465,100	219,109	75,067	103,198	176,571	69,420	47.1	16.1	22.2	38.0	14.9	1998	260,905	10.2	109,180	41.8%	37.6	62.4

* In most contests, election results do not include results from third party, independent, or write-in candidates. Complete official results are maintained by the office of the secretary of state.
** "Statewides" is a weighted average of the results of all general election statewide contested contests.

Request:14634

POPULATION AND GENERAL ELECTION HISTORY
CONGRESSIONAL DISTRICTS - PLAN 01123C

PLAN 01123C DIST		2000 CENSUS: TOTAL POPULATION: DEVIATION		TOTAL	ANGLO	BLACK	HISP	B+H	OTHER	% POPULATION: %A	%B	%H	%B+H	%O	GENERAL ELECTION HISTORY*: YEAR	VOTER REG: TOTAL	VOTER REG: %SPAN	TURNOUT: TOTAL	TURNOUT: TO/VR	STATEWIDES**: %DEM	STATEWIDES**: %REP
23	Total	0	(0.00%)	651,619	171,576	19,288	455,580	472,887	7,156	26.3	3.0	69.9	72.6	1.1	2000	300,505	56.6	154,983	51.6%	44.6	55.4
	VAP			437,205	132,651	12,988	287,444	299,481	5,073	30.3	3.0	65.7	68.5	1.2	1998	286,429	54.2	99,280	34.7%	51.3	48.7
24	Total	0	(0.00%)	651,619	185,273	74,237	370,028	441,995	24,351	28.4	11.4	56.8	67.8	3.7	2000	208,564	24.7	116,632	55.9%	52.4	47.6
	VAP			460,035	157,411	50,563	234,970	284,309	18,315	34.2	11.0	51.1	61.8	4.0	1998	197,099	21.8	63,946	32.4%	51.3	48.7
25	Total	0	(0.00%)	651,619	299,332	110,556	202,002	309,897	42,390	45.9	17.0	31.0	47.6	6.5	2000	291,556	13.5	192,838	66.1%	43.5	56.5
	VAP			464,252	232,271	73,005	128,613	200,144	31,837	50.0	15.7	27.7	43.1	6.9	1998	272,898	12.1	108,568	39.8%	42.6	57.4
26	Total	0	(0.00%)	651,619	454,899	52,103	91,346	142,133	54,587	69.8	8.0	14.0	21.8	8.4	2000	326,869	5.0	236,419	72.3%	28.0	72.0
	VAP			495,688	356,281	37,106	62,785	99,201	40,206	71.9	7.5	12.7	20.0	8.1	1998	298,293	4.3	125,939	42.2%	26.0	74.0
27	Total	0	(0.00%)	651,619	169,404	16,742	457,508	472,156	10,059	26.0	2.6	70.2	72.5	1.5	2000	300,404	58.7	162,150	54.0%	50.1	49.9
	VAP			449,092	135,224	10,755	296,757	306,564	7,304	30.1	2.4	66.1	68.3	1.6	1998	291,396	57.7	99,694	34.2%	54.0	46.0
28	Total	0	(0.00%)	651,619	189,020	65,389	386,981	448,962	13,637	29.0	10.0	59.4	68.9	2.1	2000	340,607	50.1	173,980	51.1%	52.7	47.3
	VAP			450,604	147,519	43,859	250,753	293,094	9,991	32.7	9.7	55.6	65.0	2.2	1998	320,746	48.8	97,360	30.4%	54.6	45.4
29	Total	0	(0.00%)	651,619	111,121	96,099	436,172	529,503	10,995	17.1	14.7	66.9	81.3	1.7	2000	242,588	40.6	124,667	51.4%	67.6	32.4
	VAP			441,045	92,551	66,670	275,040	340,216	8,278	21.0	15.1	62.4	77.1	1.9	1998	244,330	37.4	71,160	29.1%	68.4	31.6
30	Total	0	(0.00%)	651,619	178,401	327,842	128,816	453,416	19,802	27.4	50.3	19.8	69.6	3.0	2000	317,376	6.8	193,067	60.8%	68.8	31.2
	VAP			448,742	138,896	220,127	77,655	296,106	13,740	31.0	49.1	17.3	66.0	3.1	1998	300,353	5.8	110,030	36.6%	68.3	31.7
31	Total	0	(0.00%)	651,619	515,195	28,049	83,571	110,868	25,556	79.1	4.3	12.8	17.0	3.9	2000	334,225	5.7	227,025	67.9%	30.2	69.8
	VAP			467,107	378,871	18,918	51,644	70,203	18,033	81.1	4.1	11.1	15.0	3.9	1998	300,944	5.2	118,427	39.4%	33.9	66.1
	Total	-1	(0.00%)	651,618	195,575	20,648	429,514	448,474	7,569	30.0	3.2	65.9	68.8	1.2	2000	293,117	51.9	153,603	52.4%	49.1	50.9
	VAP			444,814	154,387	14,833	270,904	284,844	5,583	34.7	3.3	60.9	64.0	1.3	1998	249,727	53.0	92,687	37.1%	54.1	45.9

* In most contests, election results do not include results from third party, independent, or write-in candidates. Complete official results are maintained by the office of the secretary of state.
** "Statewides" is a weighted average of the results of all general election statewide contested contests.

Request:14634

POPULATION AND GENERAL ELECTION HISTORY
SENATE DISTRICTS - PLAN 01206S

PLAN 01206S DIST		2000 CENSUS: TOTAL POPULATION: DEVIATION		TOTAL	ANGLO	BLACK	HISP	B+H	OTHER	% POPULATION: %A	%B	%H	%B+H	%O	GENERAL ELECTION HISTORY*: -YEAR-	VOTER REG: TOTAL	VOTER REG: %SPAN	TURNOUT: TOTAL	TURNOUT: TO/VR	STATEWIDES**: %DEM	STATEWIDES**: %REP
1	Total	+ 28,938	(+4.30%)	701,577	498,912	133,714	59,605	192,328	10,337	71.1	19.1	8.5	27.4	1.5	2000	375,085	1.8	240,199	64.0%	38.9	61.1
	VAP			518,938	383,913	92,392	35,621	127,457	7,568	74.0	17.8	6.9	24.6	1.5	1998	369,802	1.5	155,929	42.2%	47.2	52.8
2	Total	-26,336	(-3.92%)	646,303	181,936	75,876	367,687	441,313	23,054	28.2	11.7	56.9	68.3	3.6	2000	208,523	24.5	116,647	55.9%	53.4	46.6
	VAP			456,043	154,719	52,022	233,278	284,076	17,248	33.9	11.4	51.2	62.3	3.8	1998	197,009	21.6	64,134	32.6%	52.5	47.5
3	Total	+ 32,530	(+4.84%)	705,169	533,272	94,630	67,217	160,910	10,987	75.6	13.4	9.5	22.8	1.6	2000	389,793	2.8	249,500	64.0%	35.4	64.6
	VAP			526,867	410,374	66,609	42,354	108,448	8,045	77.9	12.6	8.0	20.6	1.5	1998	372,897	2.5	154,119	41.3%	42.6	57.4
4	Total	+ 30,459	(+4.53%)	703,098	465,637	137,269	80,797	216,559	20,902	66.2	19.5	11.5	30.8	3.0	2000	387,042	6.0	267,600	69.1%	43.5	56.5
	VAP			510,639	350,161	94,390	52,301	145,898	14,580	68.6	18.5	10.2	28.6	2.9	1998	373,452	5.7	155,798	41.7%	52.2	47.8
5	Total	-18,346	(-2.73%)	654,293	452,487	71,215	114,866	184,622	17,184	69.2	10.9	17.6	28.2	2.6	2000	334,956	8.5	233,638	69.8%	30.8	69.2
	VAP			481,460	347,902	48,580	72,795	120,703	12,855	72.3	10.1	15.1	25.1	2.7	1998	296,060	8.1	141,300	47.7%	37.2	62.8
6	Total	+ 22,084	(+3.28%)	694,723	140,714	79,970	460,010	536,992	17,017	20.3	11.5	66.2	77.3	2.4	2000	247,537	41.4	129,165	52.2%	61.5	38.5
	VAP			470,221	115,758	53,727	289,645	341,772	12,691	24.6	11.4	61.6	72.7	2.7	1998	246,743	38.2	72,007	29.2%	61.6	38.4
7	Total	-1,469	(-0.22%)	671,170	472,913	46,382	105,839	150,790	47,467	70.5	6.9	15.8	22.5	7.1	2000	357,486	7.8	254,842	71.3%	23.5	76.5
	VAP			474,121	344,920	29,596	67,185	96,038	33,163	72.7	6.2	14.2	20.3	7.0	1998	318,150	6.8	132,199	41.6%	22.2	77.8
8	Total	+ 19,623	(+2.92%)	692,262	509,186	39,611	80,417	118,930	64,146	73.6	5.7	11.6	17.2	9.3	2000	362,343	4.5	262,572	72.5%	25.3	74.7
	VAP			511,700	384,778	26,965	54,250	80,673	46,249	75.2	5.3	10.6	15.8	9.0	1998	315,542	4.1	135,519	42.9%	24.0	76.0
9	Total	+ 29,402	(+4.37%)	702,041	550,113	37,581	71,720	108,319	43,609	78.4	5.4	10.2	15.4	6.2	2000	360,443	5.1	259,385	72.0%	25.3	74.7
	VAP			497,685	396,830	24,527	46,513	70,569	30,286	79.7	4.9	9.3	14.2	6.1	1998	318,983	4.6	120,696	37.8%	25.0	75.0
10	Total	+ 19,331	(+2.87%)	691,970	519,738	49,047	95,603	143,373	28,859	75.1	7.1	13.8	20.7	4.2	2000	346,384	5.4	237,558	68.6%	30.5	69.5
	VAP			504,716	390,343	32,968	60,919	93,243	21,130	77.3	6.5	12.1	18.5	4.2	1998	321,791	4.7	135,221	42.0%	33.4	66.6
11	Total	+ 10,539	(+1.57%)	683,178	487,298	44,820	119,721	163,341	32,539	71.3	6.6	17.5	23.9	4.8	2000	382,026	10.0	277,889	72.7%	31.3	68.7
	VAP			487,339	360,315	28,975	75,687	104,179	22,845	73.9	5.9	15.5	21.4	4.7	1998	350,169	9.3	135,474	38.7%	31.8	68.2

* In most contests, election results do not include results from third party, independent, or write-in candidates. Complete official results are maintained by the office of the secretary of state.
** "Statewides" is a weighted average of the results of all general election statewide contested contests.

Admitted into the trial record as Balderas Pl. Exh. 4 in the senate phase of the case.
Request:15071

POPULATION AND GENERAL ELECTION HISTORY
SENATE DISTRICTS - PLAN 01206S

PLAN 01206S DIST		2000 CENSUS: TOTAL POPULATION: DEVIATION		TOTAL	ANGLO	BLACK	HISP	B+H	OTHER	% POPULATION: %A	%B	%H	%B+H	%O	GENERAL ELECTION HISTORY*: -YEAR-	—VOTER REG— TOTAL	%SPAN	—TURNOUT— TOTAL	TO/VR	STATEWIDES** %DEM	%REP
12	Total	+ 4,274	(+0.64%)	676,913	343,274	124,052	183,951	305,865	27,774	50.7	18.3	27.2	45.2	4.1	2000	298,566	11.4	198,791	66.6%	48.3	51.7
	VAP			490,545	274,167	82,918	114,587	196,475	19,903	55.9	16.9	23.4	40.1	4.1	1998	292,584	10.2	116,707	39.9%	49.8	50.2
13	Total	+ 11,538	(+1.72%)	684,177	139,176	323,559	169,364	488,673	56,328	20.3	47.3	24.8	71.4	8.2	2000	321,371	8.8	203,203	63.2%	71.7	28.3
	VAP			494,716	119,727	224,317	109,458	331,328	43,661	24.2	45.3	22.1	67.0	8.8	1998	309,364	7.7	122,545	39.6%	71.7	28.3
14	Total	+ 30,171	(+4.49%)	702,810	370,776	77,172	214,063	288,132	43,902	52.8	11.0	30.5	41.0	6.2	2000	361,934	16.0	250,636	69.2%	50.6	49.4
	VAP			539,871	308,089	52,872	145,040	196,348	35,434	57.1	9.8	26.9	36.4	6.6	1998	318,103	15.5	146,767	46.1%	53.8	46.2
15	Total	-28,152	(-4.19%)	644,487	201,570	169,517	242,393	408,914	34,003	31.3	26.3	37.6	63.4	5.3	2000	262,651	16.2	158,011	60.2%	54.7	45.3
	VAP			449,555	161,180	111,863	152,907	263,273	25,102	35.9	24.9	34.0	58.6	5.6	1998	253,189	14.3	85,473	33.8%	53.7	46.3
16	Total	+ 29,735	(+4.42%)	702,374	422,498	94,817	137,981	231,057	48,819	60.2	13.5	19.6	32.9	7.0	2000	328,503	6.6	221,077	67.3%	33.8	66.2
	VAP			512,974	326,703	62,413	89,204	150,724	35,547	63.7	12.2	17.4	29.4	6.9	1998	306,388	5.7	123,040	40.2%	31.1	68.9
17	Total	+ 32,371	(+4.81%)	705,010	377,059	82,026	163,429	243,027	84,924	53.5	11.6	23.2	34.5	12.0	2000	330,557	10.3	234,412	70.9%	32.6	67.4
	VAP			518,301	290,205	56,930	110,712	166,210	61,886	56.0	11.0	21.4	32.1	11.9	1998	298,979	9.6	129,368	43.3%	31.7	68.3
18	Total	-10,410	(-1.55%)	662,229	179,948	18,388	457,512	474,170	8,111	27.2	2.8	69.1	71.6	1.2	2000	296,821	54.8	153,854	51.8%	50.6	49.4
	VAP			451,964	143,153	13,162	290,659	302,900	5,911	31.7	2.9	64.3	67.0	1.3	1998	261,801	55.3	91,516	35.0%	54.7	45.3
19	Total	-7,522	(-1.12%)	665,117	201,867	32,277	424,117	453,985	9,265	30.4	4.9	63.8	68.3	1.4	2000	321,007	51.9	169,790	52.9%	47.9	52.1
	VAP			458,451	159,874	22,812	270,079	291,801	6,776	34.9	5.0	58.9	63.6	1.5	1998	306,951	50.0	107,670	35.1%	52.9	47.1
20	Total	-14,790	(-2.20%)	657,849	184,551	18,556	446,038	462,395	10,903	28.1	2.8	67.8	70.3	1.7	2000	308,984	56.4	167,762	54.3%	49.2	50.8
	VAP			455,262	146,242	12,036	290,017	301,063	7,957	32.1	2.6	63.7	66.1	1.7	1998	297,946	55.7	102,966	34.6%	53.5	46.5
21	Total	-22,421	(-3.33%)	650,218	174,735	52,765	412,908	462,515	12,968	26.9	8.1	63.5	71.1	2.0	2000	324,033	52.7	162,898	50.3%	49.5	50.5
	VAP			444,280	135,677	34,982	265,619	299,110	9,493	30.5	7.9	59.8	67.3	2.1	1998	292,749	52.0	91,212	31.2%	53.2	46.8
22	Total	-74	(-0.01%)	672,565	440,442	116,450	104,692	219,283	12,840	65.5	17.3	15.6	32.6	1.9	2000	328,587	6.7	207,180	63.1%	39.8	60.2
	VAP			499,791	343,569	81,352	66,141	146,662	9,560	68.7	16.3	13.2	29.3	1.9	1998	314,258	6.2	130,547	41.5%	46.8	53.2

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POPULATION AND GENERAL ELECTION HISTORY
SENATE DISTRICTS - PLAN 01206S

PLAN 01206S DIST		2000 CENSUS: TOTAL POPULATION: DEVIATION		TOTAL	ANGLO	BLACK	HISP	B+H	OTHER	% POPULATION: %A	%B	%H	%B+H	%O	GENERAL ELECTION HISTORY*: -YEAR-	VOTER REG: TOTAL	VOTER REG: %SPAN	TURNOUT: TOTAL	TURNOUT: TO/VR	STATEWIDES**: %DEM	STATEWIDES**: %REP
23	Total	-20,496	(-3.05%)	652,143	216,971	286,225	125,476	408,661	26,511	33.3	43.9	19.2	62.7	4.1	2000	314,886	7.7	190,086	60.4%	62.9	37.1
	VAP			450,888	167,184	190,413	76,298	265,214	18,490	37.1	42.2	16.9	58.8	4.1	1998	292,879	6.6	103,553	35.4%	61.4	38.6
24	Total	-30,857	(-4.59%)	641,782	448,438	68,356	108,776	174,227	19,117	69.9	10.7	16.9	27.1	3.0	2000	329,516	9.7	210,338	63.8%	31.3	68.7
	VAP			471,676	347,928	43,686	67,509	109,852	13,896	73.8	9.3	14.3	23.3	2.9	1998	308,100	9.3	137,427	44.6%	39.1	60.9
25	Total	-19,027	(-2.83%)	653,612	509,495	17,551	105,062	121,619	22,498	78.0	2.7	16.1	18.6	3.4	2000	407,707	10.4	301,117	73.9%	26.0	74.0
	VAP			479,697	383,932	11,396	69,018	79,967	15,798	80.0	2.4	14.4	16.7	3.3	1998	355,043	9.6	174,467	49.1%	28.1	71.9
26	Total	-16,373	(-2.43%)	656,266	190,934	33,880	415,920	446,551	18,781	29.1	5.2	63.4	68.0	2.9	2000	337,890	53.4	183,408	54.3%	50.7	49.3
	VAP			472,622	154,372	22,788	282,765	304,107	14,143	32.7	4.8	59.8	64.3	3.0	1998	316,465	52.4	101,028	31.9%	51.5	48.5
27	Total	-27,781	(-4.13%)	644,858	194,169	23,364	420,625	442,341	8,348	30.1	3.6	65.2	68.6	1.3	2000	311,880	50.4	167,370	53.7%	48.7	51.3
	VAP			442,118	153,011	16,843	267,247	283,351	5,756	34.6	3.8	60.4	64.1	1.3	1998	298,911	48.8	103,007	34.5%	52.2	47.8
28	Total	-25,234	(-3.75%)	647,405	414,892	49,907	170,556	218,777	13,736	64.1	7.7	26.3	33.8	2.1	2000	341,504	17.8	210,211	61.6%	30.9	69.1
	VAP			477,490	326,237	34,365	107,345	141,076	10,177	68.3	7.2	22.5	29.5	2.1	1998	332,922	16.8	146,361	44.0%	39.2	60.8
29	Total	-31,099	(-4.62%)	641,540	114,103	23,309	495,301	515,339	12,098	17.8	3.6	77.2	80.3	1.9	2000	292,625	64.2	143,580	49.1%	56.7	43.3
	VAP			439,469	90,366	15,112	326,478	340,148	8,955	20.6	3.4	74.3	77.4	2.0	1998	267,868	62.9	90,653	33.8%	60.0	40.0
30	Total	+23,658	(+3.52%)	696,297	571,354	39,752	68,884	107,921	17,022	82.1	5.7	9.9	15.5	2.4	2000	366,300	3.4	237,458	64.8%	33.7	66.3
	VAP			513,248	431,253	27,338	42,464	69,460	12,535	84.0	5.3	8.3	13.5	2.4	1998	341,895	3.0	144,370	42.2%	40.0	60.0
31	Total	-24,255	(-3.61%)	648,384	424,855	31,019	179,136	208,703	14,826	65.5	4.8	27.6	32.2	2.3	2000	330,301	14.6	209,116	63.3%	23.2	76.8
	VAP			462,414	323,284	20,289	108,806	128,532	10,598	69.9	4.4	23.5	27.8	2.3	1998	322,189	13.1	140,272	43.5%	28.5	71.5

* In most contests, election results do not include results from third party, independent, or write-in candidates. Complete official results are maintained by the office of the secretary of state.
** "Statewides" is a weighted average of the results of all general election statewide contested contests.

No. 01-1196

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IN THE

Supreme Court of the United States

SIMON BALDERAS, *et al.*,
Appellants,
v.
STATE OF TEXAS, *et al.*,
Appellees.

On Appeal from the United States District Court for the Eastern District of Texas

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MOTION TO AFFIRM

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 2

ARGUMENT 8

I. THE DISTRICT COURT DID NOT ERR IN REQUIRING A SHOWING THAT IT WAS POSSIBLE TO CREATE SEVEN "EFFECTIVE" MAJORITY-LATINO DISTRICTS 10

A. Section 2 Requires an Inquiry into the Actual Opportunities of Minority Voters to Elect Candidates of Their Choice, Not a Bright-Line Test 11

B. Appellants Made No Effort to Prove that Their Proposed Districts Would Give Latino Voters a Reasonable Opportunity to Elect Candidates of Their Choice 14

II. THE DISTRICT COURT CORRECTLY ASSESSED THE COMPACTNESS OF APPELLANTS' PROPOSED DISTRICTS 17

III. THE DISTRICT COURT WAS NOT REQUIRED TO ISSUE MORE EXTENSIVE FINDINGS OF FACT 20

CONCLUSION 23

APPENDIX A

Map of Plan 1123C 1a

APPENDIX B

Excerpts of Trial Transcripts, *Balderas v. Texas*, Civil Action No. 6:01-CV-158 (E.D. Tex. Oct. 23-Nov. 1, 2001) 2a

TABLE OF AUTHORITIES

CASES Page

Abrams v. Johnson, 521 U.S. 74 (1997) 16, 17, 20

African American Voting Rights Legal Defense Fund, Inc. v. Villa, 54 F.3d 1345 (8th Cir. 1995), *cert. denied*, 516 U.S. 1113 (1996) 13

Barnett v. City of Chicago, 141 F.3d 699 (7th Cir. 1998), *cert. denied*, 524 U.S. 954 (1998) 13

Burma Navigation Corp. v. Reliant Seahorse MV, 99 F.3d 652 (5th Cir. 1996) 21

Bush v. Vera, 517 U.S. 952 (1996) (plurality op.) . . . . . *passim*

Connor v. Finch, 431 U.S. 407 (1977) 4

Del Rio v. Perry, No. GN003665, Final Judgment (D. Ct. Travis County, Tex., 353d Judicial Dist., Oct. 10, 2001) 3

Growe v. Emison, 507 U.S. 25 (1993) 2

Johnson v. De Grandy, 512 U.S. 997 (1994) 11, 12

Ketchum v. Byrne, 740 F.2d 1398 (7th Cir. 1984) 13

LULAC v. Roscoe Independent School District, 123 F.3d 843 (5th Cir. 1997) 22, 23

Monroe v. City of Woodville, 819 F.2d 507 (5th Cir. 1987) 14

Overton v. City of Austin, 871 F.2d 529 (5th Cir. 1989) 13

Page v. Bartels, 144 F. Supp. 2d 346 (D.N.J. 2001) 14

TABLE OF AUTHORITIES - continued

Page

Perry v. Del Rio, No. 01-0728, 44 Tex. Sup. Ct. J. 1147, 2001 Tex. LEXIS 81 (Sept. 12, 2001) 3

Perry v. Del Rio, No. 01-0988, 45 Tex. Sup. Ct. J. 52, 2001 Tex. LEXIS 98 (Oct. 19, 2001) 3

Romero v. City of Pomona, 883 F.2d 1418 (9th Cir. 1989) 13

Statewide Reapportionment Advisory Committee v. Theodore, 508 U.S. 968 (1993) 22

Thornburg v. Gingles, 478 U.S. 30 (1986) . . . . . *passim*

Valdespino v. Alamo Heights Independent School District, 168 F.3d 848 (5th Cir. 1999), *cert. denied*, 528 U.S. 1114 (2000) 14

Vera v. Bush, 933 F. Supp. 1341 (S.D. Tex. 1996) 19, 20

Withrow v. Larkin, 421 U.S. 35 (1975) 23

STATUTES AND RULES

42 U.S.C. § 1973(b) 7, 9

Texas Election Code § 14.001 3

S. Ct. R. 18.6 1

Fed. R. Civ. P. 52(a) 20, 21

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MOTION TO AFFIRM

Pursuant to Supreme Court Rule 18.6, Appellee Brian Manley urges this Court to affirm the decision of a federal three-judge court establishing, after a full trial, the district lines for the 32 congressional districts allocated to the State of Texas. The district court properly rejected the argument that the Voting Rights Act required adoption of the Appellants' proposed configuration of districts in South Texas, which sought to squeeze a seventh majority-Latino district into that region by drawing districts stretching from the Mexican border far to the north and lowering the Latino share of the population in each district. The court recognized that Appellants' proposed districts were not sufficiently compact to trigger the requirements of section 2 of the

Voting Rights Act, and that they would have the effect of fracturing the Latino population to the point where its electoral power would be *reduced* rather than enhanced. Appellants have identified no significant legal issue raised by this case. Nor can they plausibly claim that the district court's conclusions lacked a strong basis in the evidence presented at trial.

STATEMENT OF THE CASE

The 2000 census revealed substantial population growth in the State of Texas. Much of the growth was fueled by an increase in the Latino population in all parts of the state, but the principal *areas* of growth were the Dallas/Fort Worth Metroplex and the greater Houston area. As a result of population growth, Texas gained two additional congressional seats, increasing its total from 30 to 32.

Congressional redistricting in Texas in 2001 followed a difficult procedural path. The Texas Legislature was unable to agree on a congressional redistricting plan during its regular session, ending on May 28, 2001. Even before the end of the legislative session, multiple lawsuits had been filed in both state and federal courts. Appellants (the Balderas plaintiffs) and Appellee (plaintiff Brian Manley) each filed suit alleging that the old 30-district congressional plan was unconstitutional. Following the teachings of this Court in *Growe v. Emison*, 507 U.S. 25 (1993), a three-judge federal court in the United States District Court for the Eastern District of Texas (Fifth Circuit Judge Higginbotham and District Judges Hannah and Ward) entered an order deferring the federal court litigation in order to allow the State, whether through a special legislative session or state court litigation, to construct a congressional redistricting

plan. The federal panel set a deadline of October 1, 2001, for the completion of the State's efforts, with a trial in federal court on any remaining federal law issues to commence on October 15, 2001. The October deadlines recognized that a final congressional redistricting plan needed to be in place by no later than November in order to avoid delaying any of the statutory deadlines in the State's election process. *See* Texas Election Code § 14.001 (requiring counties to distribute voter registration cards identifying each voter's precinct between November 15 and December 6).

Pretrial wrangling in state court ultimately required the Texas Supreme Court to determine which of two competing state trial courts properly had jurisdiction over congressional redistricting. *See Perry v. Del Rio*, No. 01-0728, 44 Tex. Sup. Ct. J. 1147, 2001 Tex. LEXIS 81 (Sept. 12, 2001). After that issue was resolved, trial began in an Austin state court on September 17, 2001, lasting two weeks. As the federal court deadline drew near, the three-judge court indicated its willingness to extend its deadline in order to allow the state trial court sufficient time to render its decision and impose a new redistricting plan. After rejecting all of the plans proposed by the parties, the state trial court in Austin proposed its own congressional plan, which it subsequently modified after receiving comments from the parties. *Del Rio v. Perry*, No. GN003665, Final Judgment (D. Ct. Travis County, Tex., 353d Judicial Dist., Oct. 10, 2001). With the federal court deadline already past and the three-judge court preparing for trial on the plan imposed by the state court, the Texas Supreme Court, on expedited appeal, vacated the state trial court's congressional plan on procedural grounds on October 19, 2001. *See Perry v. Del Rio*, No. 01-0988, 45 Tex. Sup. Ct. J. 52, 2001 Tex. LEXIS 98 (Oct. 19, 2001). Thus, almost three weeks after the federal court's initial

deadline, there was still no congressional plan for the State of Texas.

With the failure of the state legislative and judicial processes, the federal court was "left with the 'unwelcome obligation'" of drawing a congressional redistricting plan for the State of Texas. J.S. App. 1 (quoting *Connor v. Finch*, 431 U.S. 407, 415 (1977)). That obligation was even more daunting given the tight time constraints imposed by the state electoral process. The three-judge court commenced trial on October 22, 2001.[1] Trial lasted two weeks. Fourteen different parties presented more than 30 witnesses, including 10 expert witnesses, to testify about aspects of dozens of proposed congressional plans. In addition, thousands of pages of computerized data from the Texas Legislative Council were introduced into evidence, providing detailed electoral, demographic, and geographic information about the State of Texas and the array of plans before the court.

At trial, Appellants introduced into evidence no less than five proposed congressional redistricting plans. Plan 1123C – the plan Appellants highlight in their jurisdictional statement and appendix – was the fifth plan Appellants proposed to the federal court and was introduced after the close of their case. It was not the subject of testimony by any of their witnesses, nor was it available prior to trial for review by other parties' experts. Like the other plans Appellants presented, however, Plan 1123C creates seven

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[1] The congressional trial was the first of three held by the panel. After the close of evidence in that trial and while they were drawing the congressional plan, the panel held trial on the state house and senate redistricting plans. Appellee moves to affirm the judgment only with respect to the congressional part of the case.

districts in South and Central Texas (proposed Districts 15, 16, 20, 23, 27, 28, and 32) in which a majority of registered voters have Spanish surnames.[2] Two districts in that plan are of particular note. District 32 in Appellants' proposed plan runs in a narrow band from the Rio Grande River near the southernmost point in Texas past San Antonio into central Texas, northeast of Austin. District 15 is a similarly narrow district that also begins at the Rio Grande, stretching up and curving around to a point where it nestles under the Houston suburbs.[3] In three of the seven districts, the percentage of registered voters with Spanish surnames is reduced to between 50% and 52%. In one of those, the percentage is 50.1%. J.S. App. 43-45.

At trial in the congressional case, Appellants offered no evidence to support the proposition that any of the plans they proposed would actually provide an improved opportunity for Latino voters to elect candidates of their choice. Indeed, the evidence adduced at trial indicated that lowering the rate of Spanish-surname registration to 50% would likely cause Latino-preferred candidates to lose. This result would arise because (1) there is severe polarization in voting patterns between Latino and non-Latino voters in South Texas, and (2) Latino registrants turn out at substantially lower rates than non-Latino registrants. In essence, the trade-off that Appellants advocated was to replace six districts where

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[2] Appellants also advocated for the creation of a district in Dallas County that would be 51.1% Latino in voting-age population, although only 24.7% of the registered voters in that proposed district would have a Spanish surname. J.S. App. 45. It was conceded that creation of this district was not compelled by the Voting Rights Act.

[3] Although Appellants did not include the map of Plan 1123C in their appendix, it is attached to this motion. *See* Manley Appellee's Appendix (M.A. App.) 1a.

Latino voters would have a reasonable opportunity to elect candidates of their choice with seven districts, some of which were likely to produce defeats for Latino-favored candidates. Appellants urged this trade-off by suggesting that "effectiveness" – *i.e.*, whether particular remedial districts were likely to result in the election of candidates of choice of minority voters – is all but irrelevant under the Voting Rights Act.

On November 14, 2001, the district court handed down a unanimous *per curiam* opinion, adopting a congressional redistricting plan that the panel had drawn. J.S. App. 1-16. The court's opinion explained in detail the process the court went through in crafting the new plan. Faced with multiple, competing approaches to drafting a plan, the court adopted a process described at trial by Professor John Alford, a Rice University professor of political science. J.S. App. 4-9. That process – intended to draw lines in a politically neutral way consistent with traditional redistricting principles – had not been used by any of the parties to the litigation, including the State of Texas, for whom Dr. Alford was testifying. The court found, however, that this method was "most appropriate for our judicial task." J.S. App. 5.

The court thoroughly detailed the process it engaged in, including the sequence of its decisions. The court first preserved the existing districts that are protected by the Voting Rights Act in order to ensure that there would be no retrogression in minority voting strength. J.S. App. 5. The court thus maintained six Latino majority districts in South Texas, as well as a Latino majority district in Houston, and preserved African-American opportunity districts in Houston and Dallas. Second, the court located new congressional seats in areas of the highest growth. That dictated placing

new districts in the Dallas/Fort Worth Metroplex area (District 32, in the north Dallas suburbs) and in the greater Houston area (District 31, in the corridor between Harris and Williamson Counties). J.S. App. 5-6. The court then filled out the rest of the plan with districts that roughly corresponded to the historic locations of districts, as drawn by the Texas Legislature in previous decades. J.S. App. 6-7. In so doing, the court emphasized compactness and attempted to follow local political boundaries. *Id.* Finally, once the plan was complete, the court checked to make certain that it had not inadvertently favored either political party. J.S. App. 8-9.

The court expressly addressed Appellants' argument that it should create an additional majority-Latino district in South Texas, stating that "the evidence shows that the Latino population is not sufficiently compact or numerous to support another, effective majority-Latino citizenship district . . . in South Texas." J.S. App. 14. The court thus rejected this claim under both the first prong of the test in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986), because the proposed districts were not sufficiently compact, *and* under the "totality of circumstances," *see* 42 U.S.C. § 1973(b), because there was no evidence demonstrating that Appellants' proposed districts were likely to result in Latino voters being able to elect Latino-preferred candidates. The court concluded that a six-district configuration, allowing higher percentages of Latinos in each district, would result in "full and equal Latino participation in the political process." J.S. App. 15.

ARGUMENT

Appellants have identified no plausible basis for overturning the congressional redistricting plan drawn and unanimously approved by the three-judge court. After a full trial in which the court received what Appellants acknowledge was "abundant" evidence concerning the possibility of creating an additional majority-Latino congressional district in South Texas, the three-judge court found "that the Latino population is not sufficiently compact or numerous to support another, effective majority-Latino citizenship district in . . . South Texas." J.S. App. 14. It concluded that, "under the totality of the circumstances, the failure to create seven such districts will not prevent full and equal Latino participation in the political process" and thus was not a violation of section 2 of the Voting Rights Act. J.S. App. 15. Appellants mount a number of factual and legal attacks on this straightforward conclusion, but none holds water.

First, Appellants' argument that the district court distorted the three-pronged test set forth in *Thornburg v. Gingles* simply mischaracterizes what the court below said. Appellants argue that the court erred in rejecting their claim that they had satisfied the first prong of *Gingles*, which requires a section 2 plaintiff to show that it is physically possible to create an additional reasonably compact minority district. They further argue that they satisfied this requirement by offering maps showing how to create an additional district with a bare majority of Spanish-surname registered voters.

But the district court did not in fact address the question whether a court should look to voter registration data, voting-

age population (VAP) data, or citizen voting-age population (CVAP) data in analyzing *Gingles'* first prong. It found that Appellants had failed to demonstrate the possibility of creating a seventh "effective" majority-Latino district, and it therefore rejected Appellants' section 2 arguments at a later stage of the analysis – the final assessment of the "totality of circumstances." *See* 42 U.S.C. § 1973(b). This finding was compelled first by the absolute lack of evidence in the record to support a claim that an additional effective district could be drawn. Appellants, apparently confident in their legal argument that likely electoral outcomes are irrelevant under section 2, introduced absolutely no evidence to suggest that the spread-out districts they proposed would actually give Latino voters a realistic opportunity to elect their preferred candidates in an additional district. And the evidence introduced by other parties supported the conclusion that the combination of high polarization in voting patterns and low turnout among Latino registered voters meant that Latino-preferred candidates stood a very good chance of losing in a district with a bare majority of Latino registered voters. *See infra* Point I.

Second, to the extent that the district court did address the first prong of *Gingles*, it rejected Appellants' section 2 claim on the separate and independent ground that Appellants had failed to satisfy that threshold requirement because their proffered districts were not "sufficiently compact." J.S. App. 14. Appellants argue that the court applied this requirement too strictly, but they fail to append their actual map corresponding to the data set forth in their appendix. An examination of that map reveals that they were asking the district court to create a series of long thin districts, including two that would have originated at the Mexican border and stretched to the outskirts of Austin and Houston, respectively.

While it may be true that these districts' "compactness scores" – at least on one measure of compactness – were no worse than those of the least compact districts previously created by the Texas Legislature (which were the subject of this Court's review in *Bush v. Vera*, 517 U.S. 952 (1996)), that is not the appropriate test for determining whether a federal court is compelled by the Voting Rights Act to adopt such districts when drawing a plan following a legislative deadlock. Rather, the district court was correct in determining that districts that stretch for hundreds of miles for the sole purpose of reaching a 50.1% quota of Spanish-surname registered voters are not compelled by the Voting Rights Act. *See infra* Point II.

Third and finally, Appellants' critique of the thoroughness of the district court's factual findings provides no conceivable basis for reversal and is particularly unpersuasive given the exigent circumstances under which the federal court was acting, due to the impending election deadlines and the complete failure of the state legislative and judicial processes to produce a congressional district plan. Here, the trial court's opinion makes clear why it did what it did and why it rejected Appellants' claim. Especially given Appellants' total lack of proof that the districts they proposed would actually create realistic electoral opportunities for Latino voters, no more is required. *See infra* Point III.

I. THE DISTRICT COURT DID NOT ERR IN REQUIRING A SHOWING THAT IT WAS POSSIBLE TO CREATE SEVEN "EFFECTIVE" MAJORITY-LATINO DISTRICTS.

Appellants argue that the Voting Rights Act compels courts to ignore whether proposed remedial districts will

actually offer minority voters a realistic opportunity to elect their preferred candidates. Rather, Appellants claim that one only need look at demographics: If a proposed district is at 50.1% or more in terms of Spanish-surname registration, then the district must be created, regardless of the actual impact on Latino voters. That is manifestly wrong. It would be a strange interpretation of the Voting Rights Act indeed to read it as requiring creation of an additional majority-minority district where a careful examination of the totality of the circumstances makes clear that doing so would actually *reduce* the political power of the protected class.

A. Section 2 Requires an Inquiry into the Actual Opportunities of Minority Voters to Elect Candidates of Their Choice, Not a Bright-Line Test.

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), this Court's first examination of vote-dilution claims under amended section 2 of the Voting Rights Act, the Court admonished trial judges to appraise the "totality of circumstances" and conduct a "searching practical evaluation" based on a "functional view of the political process." 478 U.S. at 45, 77-79 (citations and internal quotation marks omitted). There is no bright-line test based on population statistics. Rather, a court must determine whether the challenged districts actually dilute the voting strength of minority voters and, concomitantly, whether a proposed remedy will actually enhance minority electoral opportunities. *See id.*

Eight years later, in *Johnson v. De Grandy*, 512 U.S. 997 (1994), the Court emphasized once again the need for a functional analysis of electoral opportunities. It rejected the

section 2 claims of Latino plaintiffs because Latinos "constitute[d] *effective* voting majorities in a number of . . . districts substantially proportional to their share in the population." 512 U.S. at 1024 (emphasis added). The Court reasoned that such rough proportionality is a strong "indication that minority voters have an equal opportunity, in spite of racial polarization, 'to participate in the political process and to elect representatives of their choice.'" *Id.* at 1020 (quoting Section 2). In so doing, the Court made clear that courts should look at "effective" or "functional" voting majorities, rather than relying entirely upon strict demographic tallies such as "50% Latino VAP" or "50% Spanish surname." *See, e.g., id.* at 1000 ("effective voting majorities"); *id.* at 1004 ("a functional majority of Hispanic voters"); *id.* at 1014, 1021, 1023 n.19 ("an effective voting majority"); *id.* at 1017 ("districts in which minority voters form an effective majority"); *id.* at 1024 ("an effective majority"). And the Court defined a district with an "effective voting majority" as one "with a sufficiently large minority population to elect candidates of its choice." *Id.* at 1008.

These cases thus teach that probable *effectiveness* – not simplistic arithmetic tallies – is the key to a proper application of the Voting Rights Act. In that Act, Congress sought to ensure minority voters *actual opportunities at the polls*, and it asked the courts to take on the sensitive and sometimes difficult task of determining whether a given districting scheme in fact is diluting minority voting strength either by unduly "packing" minority voters into too few districts or by unduly "fracturing" them into too many. *See Gingles*, 478 U.S. at 46 & n.11.

Other federal courts have also recognized a need for a "functional" evaluation, examining a variety of practical considerations, including differential rates of turnout, when considering the validity of a section 2 claim under the "totality of circumstances." For example, in *Ketchum v. Byrne*, 740 F.2d 1398 (7th Cir. 1984), the Seventh Circuit held that a district court "must carefully consider and evaluate the data concerning voter registration *and turn-out* in the black and Hispanic communities to determine the practical need for a super-majority of the respective minority groups in order to give the minorities a reasonable and fair opportunity to elect candidates of their choice." *Id.* at 1414 (emphasis added). "There is simply no point," the court explained, "in providing minorities with a 'remedy' for the illegal deprivation of their representational rights in a form which will not in fact provide them with a realistic opportunity to elect a representative of their choice." *Id.* at 1413; *see also Barnett v. City of Chicago*, 141 F.3d 699, 702-03 (7th Cir. 1998) (discussing low black turnout and citing *Ketchum*, 740 F.2d at 1413-16), *cert. denied*, 524 U.S. 954 (1998); *African American Voting Rights Legal Defense Fund, Inc. v. Villa*, 54 F.3d 1345, 1348 n.4 (8th Cir. 1995) (same), *cert. denied*, 516 U.S. 1113 (1996); *Overton v. City of Austin*, 871 F.2d 529, 542 (5th Cir. 1989) (Jones, J., concurring) ("It would be a Pyrrhic victory for a court to create a [majority-minority] district in which [the] minority population . . . continued to be defeated at the polls."); *Romero v. City of Pomona*, 883 F.2d 1418, 1425 & n.13 (9th Cir. 1989) ("Raw population totals are relevant only to the extent that they reveal whether the minority group constitutes an *effective voting majority* in a proposed single-member district given such factors as low voter registration and turnout patterns.") (internal citation omitted) (emphasis added).

This is not to say that majority-minority districts proposed by plaintiffs in section 2 cases must always have a population that is more than 50% minority. "[T]he question of the size of the majority necessary to ensure the likelihood of success at the polls cannot be determined by a set formula, but must be evaluated on a case-by-case basis according to the political and other characteristics of the relevant population." *Monroe v. City of Woodville*, 819 F.2d 507, 510 n.1 (5th Cir. 1987) (citing *Ketchum*). In some places, because of turnout rates and crossover voting patterns, a district can be "effective" even if African-Americans or Latinos constitute substantially less than 50% of the population. *See Page v. Bartels*, 144 F. Supp. 2d 346, 362-66 (D.N.J. 2001) (three-judge court) (finding that districts with less than an African-American majority may provide a realistic opportunity to elect candidates of choice for African-Americans). *But see Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 852-53 (5th Cir. 1999) (holding that there can no violation of section 2 unless the protected group constitutes at least a majority of a reasonably compact district), *cert. denied*, 528 U.S. 1114 (2000). But in other places with high polarization and differential turnout rates, a bare majority may not be enough.

B. Appellants Made No Effort to Prove that Their Proposed Districts Would Give Latino Voters a Reasonable Opportunity to Elect Candidates of Their Choice.

The record in the trial court is devoid of evidence to suggest that the seven congressional districts proposed by Appellants would be effective for Latino voters. That is because Appellants chose not to introduce *any* evidence in the congressional portion of this case concerning

effectiveness, gambling instead on winning the argument that section 2 requires creation of an additional majority-Latino district whenever that is shown to be physically possible. Appellants' expert, Dr. Richard Engstrom, looked at the issue of racially polarized voting, but provided no testimony on the question whether the districts Appellants sought to create would actually provide Latino voters with a reasonable opportunity to elect candidates of their choice.[4]

Other parties did, however, address that question. There was ample evidence at trial that turnout among Latino registrants in the South Texas region was far lower than turnout of Anglo registrants. Indeed, even where Latinos comprise 60-65% of all registered voters, Anglos often constitute a majority of *actual* voters on Election Day and thus are able to control the outcome. M.A. App. 21a; 5a-6a. All of the experts who testified agreed that one district in the 1990s with a 53.2% Spanish surname registration level had regularly elected the Anglo-preferred candidate over Latino-preferred candidates. *See, e.g.*, M.A. App. 18a. As a result, the practical effect of spreading Latino voters among seven districts is to "marginalize" the districts, risking that Latino voters will not have a legitimate opportunity to elect a preferred candidate in at least two of the seven districts. M.A. App. 17a-18a; 2a-4a. As one expert witness, Dr. Allan Lichtman, explained based on examination of past election results, while some of the seven districts proposed by Appellants would be effective in allowing Latino voters an opportunity to elect preferred candidates, other districts

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[4] In their post-trial proposed findings, Appellants' "evidence" on effectiveness consisted only of citations to two exhibits not sponsored by any expert and to their cross-examination of Dr. Lichtman, who testified that two of the seven districts Appellants proposed were marginal.

would at best be marginal, creating a very real possibility that the districts would obstruct, rather than enhance, minority representation.[5] *Id.*

The court also heard powerful testimony from Congressman Charlie Gonzalez, who represents District 20 in San Antonio. Congressman Gonzalez testified that districts with Spanish-surname registration at or just above 50% would not be winnable districts for Latino-preferred candidates. M.A. App. 7a. He explained how Appellants' proposals, far from improving the electoral opportunities of Latino voters, would actually decrease them by spreading Latinos so thinly that they would not have a reasonable chance to elect their preferred candidates. M.A. App. 8a-9a.

Faced with no evidence to justify the districts proposed by Appellants – and strong evidence that suggested that to create those districts would actually detract from the goal of minority political opportunity – the district court was wholly correct in rejecting Appellants' argument.

In drawing remedial districts, the court, like a State, "must have 'a *strong* basis in evidence' for finding that the threshold conditions for § 2 liability are present." *Bush v. Vera,* 517 U.S. at 978 (quoting *Gingles*, 478 U.S. at 50-51); *see also Abrams v. Johnson*, 521 U.S. 74, 91 (1997). No such evidence was before the district court, and it was correct in refusing to create the districts demanded by Appellants.

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[5] Not surprisingly, one of the groups of Latino intervenors in the trial court argued strongly against the creation of seven Spanish-surname majority districts in South Texas. M.A. App. 10a-11a.

II. THE DISTRICT COURT CORRECTLY ASSESSED THE COMPACTNESS OF APPELLANTS' PROPOSED DISTRICTS.

Appellants also attack the district court's compactness ruling, arguing that the court "failed to apply *any* legal standard" in determining whether the Latino population was sufficiently compact to justify the creation of seven – rather than six – majority-Latino districts. J.S. 18 (emphasis added). That is simply untrue. The court was fully able to examine the districts proposed by Appellants in their effort to satisfy the *Gingles* factors, and it reached the appropriate conclusion that Appellants had failed to demonstrate the possibility of creating an additional reasonably compact Latino majority district.

This Court has made clear that section 2 does not require a State (or likewise a court) to create, on predominantly racial lines, a district that is not "reasonably compact." *Bush v. Vera,* 517 U.S. at 979 (plurality op.) (*citing Johnson v. DeGrandy*, 512 U.S. at 1008 (1994)); *see also Abrams v. Johnson*, 521 U.S. at 91 ("Here the District Court found, without clear error, that the black population was not sufficiently compact for a second majority-black district. . . . So the first of the *Gingles* factors is not satisfied."). Under *Gingles*, section 2 is not violated if a reasonably compact minority district cannot be drawn. And under *Shaw*, noncompact districts that are drawn for the predominant purpose of attaining a particular racial composition presumptively violate the Fourteenth Amendment. *See Bush v. Vera*, 517 U.S. at 969-72 (plurality op.) (invalidating a noncompact district that had been intentionally drawn to meet a target of 50.1% African-American population).

The district court properly applied this Court's dictates and avoided the specter of districts that violate the Fourteenth Amendment. Specifically addressing the Appellants' proposal for an additional Latino district, the court correctly noted that it was not required to create a majority-minority district where sufficient compactness was lacking, J.S. App. 9-14, and found that Appellants had not satisfied the compactness requirement in the first prong of *Gingles*.

This finding is amply supported by the record. In evaluating whether a district is sufficiently compact for section 2 purposes, "[d]istrict shape is not irrelevant." *Bush v. Vera*, 517 U.S. at 980 (plurality op.). An examination of the Appellants' proposed districts indicates they were asking the court to create very long and noncompact districts, including two that would have originated at the Mexican border in far-southern Hidalgo County, stretching from there to the outskirts of Austin and Houston, respectively.[6] Moreover, the record further indicates that the districts were drawn in order to achieve a precise race-based target – 50.1% of Spanish surname registered voters; indeed, three of the 7 districts have Spanish surname registrations of less than 52% and one is exactly 50.1%. J.S. App. 43-45. One expert witness testified that, while disregarding traditional redistricting principles and subordinating compactness, the majority-minority districts proposed in Appellants' Plan 1123C divided counties and cities on the basis of race, shifting Latino precincts into Latino districts and Anglo

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[6] In addition, Texas Lieutenant Governor Ratliff, who himself drew and submitted to the court a plan that sought to comport with neutral principles, including compactness and respect for county and city lines, testified that he attempted to draw an additional majority-Latino district in South Texas, but found it impossible without wholly forgoing compactness and engaging in racial gerrymandering. M.A. App 12a-13a.

precincts into Anglo districts. M.A. App. 15a. Given this record, the trial court did not abuse its discretion in finding these districts noncompact and refusing to create them.

Appellants' argument that its proposed Latino districts were more compact than other Texas districts in the 1990s, *see* J.S. 19-20, is a red herring. The congressional districts formerly existing in Texas were the product of the state legislative process, which had the flexibility to create less compact districts – or even bizarre districts – for reasons unrelated to race. *See Bush v. Vera*, 517 U.S. at 964-65 (plurality op.) (State may draw irregular district lines in order to allocate seats proportionately to major political parties); *id.* at 977-78 ("Under our cases, the States retain a flexibility that federal courts enforcing § 2 lack, both insofar as they may avoid strict scrutiny altogether by respecting their own traditional districting principles, and insofar as deference is due to their reasonable fears of, and to their reasonable efforts to avoid, § 2 liability."). But a court may not draw noncompact districts and subordinate other traditional redistricting principles where the goal is to create districts matching a particular racial or ethnic quota.

Similarly unavailing are the Appellants' compactness comparisons to the remedial districts created by a Texas district court in 1996 as well as other districts in the very map adopted below, *see* J.S. 19-20. Even if some of those districts are less compact than some of the Latino districts proposed by Appellants, such an observation proves nothing, given that those districts were the product of non-racial, neutral factors – unlike those urged on this Court by Appellants. *See Vera v. Bush*, 933 F. Supp. 1341, 1348 (S.D. Tex. 1996) (three-judge court) (noting primary factors of compactness and contiguity, as well as an attempt to

minimize the impact on surrounding congressional districts); J.S. App. 4-9 (where lower court explained that it "did not depart from our neutral factors to draw any district not required by law [*i.e.*, the Voting Rights Act]"). Moreover, although the long, narrow districts proposed by Appellants do not score terribly on the perimeter-to-area measure highlighted by Appellants in their jurisdictional statement, they fare worse on another standard measure of compactness (the "smallest circle" measure), which measures the ratio of the district's area to the area of the smallest circle that can circumscribe the district. On the latter measure, Appellants' proposed District 32 was the least compact district of any plan considered at trial and less compact than any district from the 1990s congressional plan in Texas.[7]

Clearly, the court below applied the correct legal standard in determining that the Appellants' proposed districts were not sufficiently compact to support a section 2 violation.

III. THE DISTRICT COURT WAS NOT REQUIRED TO ISSUE MORE EXTENSIVE FINDINGS OF FACT.

In a last-ditch effort to overturn the ruling below, Appellants allege a Rule 52(a) violation, claiming that the court below failed to support its judgment with findings sufficient for appellate review. *See* J.S. 20-26 (citing Fed. R.

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[7] Plan 1123C fares poorly on other redistricting criteria as well. It pairs 6 incumbents, even though Texas received two additional congressional seats. It also splits 17 more municipalities than the plan adopted by the court below, and preserves the cores of existing districts significantly less well than the plan adopted. *See Abrams v. Johnson*, 521 U.S. at 92 ("§ 2 compactness inquiry should take into account" other traditional redistricting criteria).

Civ. P. 52(a)). But under that rule, the court "need only make brief, definite, pertinent findings and conclusions upon the contested matters; there is no necessity for over-elaboration of detail or particularization of facts." Advisory Committee Notes to Fed. R. Civ. P. 52(a). Rule 52 is satisfied if the district court's findings give the reviewing court a clear understanding of the factual basis for the decision. *Burma Navigation Corp. v. Reliant Seahorse MV*, 99 F.3d 652, 657 (5th Cir. 1996). Indeed, unlike Appellants' seeming request, Rule 52(a) "exacts neither punctilious detail nor slavish tracing of the claims issue by issue and witness by witness." *Id.* (internal quotation marks omitted). The explicit mandates and purpose of Rule 52(a) do not suddenly change within the context of Voting Rights Act cases, despite the "intensely local appraisal" the lower court must make. *See* J.S. 20 (quoting *White v. Regester*, 412 U.S. 755, 769-770 (1973)).

The district court operated under tremendous time pressures in performing its complex and enormous task. Moreover, unlike in an ordinary section 2 case, where there are specific districts being challenged, here the court was tasked with drawing an entire 32-district congressional plan for the State of Texas. The court heard expert and lay testimony on myriad plans, which it then had to distill in order to draw its own plan.

The court did its job thoroughly and completely. In this case, the court clearly described the methodology it used, the expert testimony upon which it relied, the specific factors it used to draw the districts, the sequence of these factors, and the manner in which it checked whether the plan was detrimental to either political party. *See* J.S. App. 1-9. Following that analysis, the court explained its understanding

of Appellants' claim, and examined that claim under the appropriate legal rubric, dispositively finding that "the Latino population is not sufficiently compact or numerous to support another, effective majority-Latino citizenship district in . . . South Texas." *Id.* at 9-14. The district court clearly supplied this Court with an appropriate roadmap for appellate review.

Appellants' reference to this Court's summary remand in a 1993 Voting Rights Act case, *Statewide Reapportionment Advisory Committee v. Theodore,* 508 U.S. 968 (1993), is wholly inapposite. *See* J.S. 21. In that case, the issue was whether the trial court had applied the right *statute*; the United States sought a remand (which was granted) because the district court errantly thought the litigation arose under section 5 of the Act rather than section 2, and thus made "no such dispostive finding with respect to any of the *Gingles* threshold requirements." *See* Brief for the United States as Amicus Curiae at 9, 12, *Statewide Reapportionment Advisory Committee v. Theodore*, 508 U.S. 968 (1993) (Nos. 92-155 and 92-219). That is certainly not the case here. The court below clearly indicated its application of section 2 of the Voting Rights Act, as well as the *Gingles* three-part test in finding that the Appellants failed to meet both the first prong of the *Gingles* test, as well as the "totality of circumstances" test. *See* J.S. App. 9-15. Moreover, given that "failure to establish any one of the *Gingles* factors precludes a section 2 violation," *see LULAC v. Roscoe Ind. Sch. Dist.*, 123 F.3d 843, 847 (5th Cir. 1997) (internal quotation marks omitted), the district court was under no obligation "to expressly mention all the evidence in its opinion." *Id.* at 846.

Even if the district court's findings lack some detail, as Appellants' allege, vacatur and remand is inappropriate

where remand proceedings are unlikely to "add anything essential to the determination of the merits." *Withrow v. Larkin*, 421 U.S. 35, 45 (1975); *see LULAC v. Roscoe Ind. Sch. Dist.*, 123 F.3d at 847 (although "the district court's discussion of statistical data in this case or . . . was closemouthed at best, there are no grounds to remand *given the evidence at trial*") (emphasis added). In this case, where a simple look at the map (appended to this motion at M.A. App. 1a) indicates the lack of compactness and where Appellants chose not to adduce any evidence on the dispositive issue of effectiveness for Latino voters, vacating and remanding is clearly inappropriate.

CONCLUSION

This Court should summarily affirm the District Court's judgment with respect to its establishment of a congressional districting plan for the State of Texas.

Respectfully submitted,

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APPENDICES

BEST AVAILABLE COPY

APPENDIX A

TEXAS
U.S. Congressional Districts
Proposed Plan - PLAN 01123 C

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL	*	CIVIL ACTION NO.
	*	
	*	6:01-CV-158
VS.	*	
	*	Austin, Texas
	*	
	*	
STATE OF TEXAS, ET AL	*	

(This Filing Applies to all Actions)

TRANSCRIPT OF BENCH TRIAL
BEFORE
THE HONORABLE PATRICK E. HIGGINBOTHAM,
THE HONORABLE JOHN HANNAH, JR.
AND
THE HONORABLE T. JOHN WARD

* * *

October 23, 2001, Morning Session

[Testimony of Dr. Allen J. Lichtman]

Page 86

1 The second group of plans reconstitute
2 District 23 and create in effect a new effective Hispanic

opportunity district in South and West Texas. Sometimes it is labeled District 31. Sometimes it is labeled District 32. In the configurations of plans that I looked at, it was a district that certainly would easily nominate an Hispanic candidate, and it was a district with sufficient Democratic strength and sufficient history of electing Hispanic candidates to provide Hispanics a reasonable opportunity to elect candidates of their choice. And so a whole series of plans, 1055C Laney II, 1102C, Mayfield I, 1097C, Mayfield II, 1021C, Laney I, 1034C, DeLay, 1089C, Davis II, and 1065C, Dav is I by creating this new district, by my count had six effective opportunity districts in South and West Texas.

Q. You said there was a third category as well?

A. Yes, and that category is uniquely occupied by one plan and that was the Balderas plan which in our enumeration is 1099C.

This is the one plan that attempts to create not six but seven Hispanic opportunity districts in the South and West Texas region.

JUDGE HIGGINBOTHAM: How do you see the 23rd. That is not an effective Hispanic district, correct?

THE WITNESS: As configured by the Balderas Plan.

JUDGE HIGGINBOTHAM: What about today?

THE WITNESS: Today it is not an effective Hispanic district. And as configured by the Balderas Plan it's a little stronger, but I still put it in – that is one of the halfs under the Balderas Plan I put it

in the gray area. If you will look at the three recent –

JUDGE HANNAH: One of those halfs are in Dallas?

THE WITNESS: No both of those halfs are South and West Texas, District 23 is in South and West Texas.

* * *

October 25, 2001, Morning Session

* * *

[Testimony of Dr. Richard Murray]

Page 17

* * *

Q. I want to go back to San Antonio, but let's take a hypothesis district that has HVAP of 62.3, SSVR of 55, and 54.1 percent on the DEM index. You have a bump in Spanish surname voter registration, correct?

A. Yes. In this hypothetical, yes.

Q. In your opinion, would this district that improves the number of registered voters in the district create a reasonable opportunity for Hispanics to elect?

A. I certainly want to look at the actual performance of the territory that's in this district and what is the voter turnout in recent elections from the Hispanic community.

JUDGE HIGGINBOTHAM: It's the failure of the Hispanic registered voters who actually vote that you are pointing to?

THE WITNESS: There is certainly lower Hispanic voting across South Texas and particularly in

Page 18

this district than Anglo voting, and for a great variety of reasons. But since that is failure, yes.

JUDGE HIGGINBOTHAM: What it comes down

to, you are saying that Hispanics are simply not voting, correct?

THE WITNESS: Hispanic voters are voting at lower levels than Anglo registered voters, yes.

* * *

October 25, 2001 Afternoon Session

* * *

[Testimony of Congressman Charlie Gonzalez]

that you are one of those kids now. But truly, it was a wonderful experience, Judge. That only lasted a year I have to admit, Judge, I am under oath. It lasted a year and I knew I should go to law school immediately.

Q. (By Mr. Smith) What was your job right before you became a member of Congress?

A. I was a State District Court Judge.

Q. Turning back to Balderas Exhibit 103, Map 1110, the evidence shows that this District 20 in Map 1110 is 57.5 percent Hispanic, and the Spanish surnamed registered voters total goes down to 50.5, just over 50 percent. Do you have a view about whether a district with those kinds of demographic characteristics would be an effective version of District 20, an effective Hispanic opportunity district?

A. I believe that it would be ineffective, and it would not be a competitive district for a Hispanic.

Q. Can you explain the reasons for that, please?

A. Well, it is always going to be voter turnout. I mean, if it's marginal at this point you drop from 58 percent to 50.5 percent Spanish surnamed registered voters. It would be wonderful if they all voted, and they all voted a certain way. But the whole thing is that voter turnout has been a consistent problem for many reasons, some have been discussed earlier. And it

will take some time, and how long I don't know, but hopefully we will improve on it, at the present time and for the foreseeable future, I don't see any real tremendous changes on election day. So that does not translate very well.

A greater consideration and aggravating the situation is it basically cut my district at Highway 90, and everything south of that which is heavily Hispanic and has been a core constituency of the 20th Congressional District since time immemorial is taken away. What they replace it with is the northwest sector of San Antonio which is highly, highly Republican and does constitute an Anglo voting bloc.

Q. Who represents that portion of San Antonio?

A. I believe that is Congressman Bonilla, and in the earlier testimony it referred to as to what makes him viable? How has he existed all these years? Well, it is thanks in great part to the voters that this particular map will be best upon the 20th Congressional District.

Q. What do you think are the chances that a district with a 50.5 percent registration rate of Hispanics would have a majority of Hispanics voting in any given election?

A. I just don't see it. Now, I know there is –

we will have this disagreement with others, but I don't see that the numbers are there to actually substantiate that you can go down to 50.5 Spanish surnamed registered voters and be competitive.

* * *

Page 116

Q. And your testimony to the Court is that under the plan that has been suggested by the Balderas Plaintiffs that 50 – I believe it's 56 percent?

A. The Valdez plan?

Q. Yeah, 50.1 percent is not enough to get you elected?

A. 51.2 percent Spanish surname standing alone is not a viable, effective competitive Latino district.

Q. That's not an exaggeration?

A. That is not an exaggeration. Otherwise, we would just go and dilute every one of these districts as long as it's over 50 percent and we would say a Latino can win. When we know that voter turnout is not the same and there is a tremendous – it's painful to say, but there is an Anglo voting bloc that outperforms – outperforms anything else, maybe even gender.

* * *

October 29, 2001, Afternoon Session

[Testimony of Juanita Valdez-Cox]

Page 16

* * *

BY MS. PERALES:
Q. Good afternoon, Ms. Valdez-Cox.
A. Good afternoon.
Q. My name is Nina Perales, and I represent the Balderas/Torres/Texas LULAC plaintiffs in this case.
I'm going to ask you a hypothetical question: Assuming that it is possible to draw two Congressional districts emanating from Hidalgo County, and both of those districts would have a majority of Latino registered voters and both of those districts would effectively elect a Latino candidate of choice, wouldn't it be better to have two districts instead of one?
A. You know, the problem with that situation is that I know how difficult it is to elect one. I know how difficult it is to get those people – the low-income

Page 17

people to be involved – actively involved in politics and participate. I stated earlier it's hard enough to walk all the streets and knock on all those doors. And then after that, making sure that they get out to vote the day of the election. That is hard work.
And to have a membership or the area of South Texas. And then to think that you have to – as

far as this area goes, and with – let's say like you are saying two districts that run up. Knowing how far north – not knowing how far north it might go, even, you know, their interests would then change. Immigration in South Texas with whatever else is up there, what are the interests that we would have in common?

I just think that to do that also, I think, would be like taking a chance that we may or that we may not, when in Hidalgo County it's –

Q. It's more safe, I understand.

A. Sure.

* * *

October 31, 2001, Afternoon Session

* * *

[Testimony of Lt. Gov. William R. Ratliff]

Page 36

* * *

Q. You talked about in the state court trial, other parties and parties who testified here about trying to create another Hispanic district either in the southern sector of Texas or Dallas/Fort Worth. When you were at REDAPPL drawing your plan, did you try as best you could to draw another Hispanic district in Dallas/Fort Worth?

A. I tried to see how you would go about it, yes.

Q. What was your conclusion?

A. I decided that you could not do it unless you destroyed – virtually destroyed the current make-up of District 30 which was one of my concepts that I didn't intend to do.

Q. Did you try to draw another Hispanic district in the southern sector of Texas.

Page 37

A. I did.

Q. Can you tell the Court what happened in that regard in that effort?

A. I saw no way to create another Hispanic district down there with – this is not the current.

Can you put 1000 up?

If you will notice – if you will notice 28, 15, 27, they all start in the Lower Rio Grande Valley

and come in long fingers up into the center of the State trying to take that massive Hispanic population and spread it north in order to – in order to increase the number of Hispanic districts.

Well, to add another one, you have to exaggerate that even more and you would have to actually go up in widths that would be less than countywide widths in order to try to spread the population to the north. To me it was a good illustration of what I thought would be a definition of racial gerrymandering, so I decided that I would not propose it.

* * *

November 1, 2001, Morning Session

* * *

[Testimony of Dr. Ronald E. Weber]

A. Yes, I understand. And the response is yes.
Q. Since they have the requisite population to be a majority, do you find –
A. The implication of that is that those would be a citizen voting age majority districts. Once we get the citizen voting age population based on Spanish surnamed, we would expect to find those being citizen VAP Hispanic majority districts.
MR. SUDAN: Could you bring up Map 1123?
Q. (By Mr. Sudan) This is one of the maps of the Balderas Plaintiffs.
A. Right.
MR. SUDAN: And would you focus in down into –
THE WITNESS: He doesn't have that plan up yet. There it is coming up.
MR. SUDAN: I think it's all up.
Q. (By Mr. Sudan) Can you look down in sort of – from San Antonio south?
MR. SUDAN: Can you go a little bit further north so we can get the extent of the district and go a little bit further?
Q. (By Mr. Sudan) Have you examined the compactness of the population in those counties as you move north from the border in Districts 16 (sic) and

32?

A. That's 15 and 32. What you see expressed in this kind of a map, and this is a good example of this and there are others that are similarly situated, is an attempt – as you move away from the Rio Grande River, the density of Hispanic populations declines, generally speaking, except for San Antonio and Houston and Dallas and Fort Worth and other places like that.

But in this 72-county area in order to get the additional Hispanic majority district, you have to string the districts north. And as I heard Lieutenant Governor Ratliff yesterday talk about why he didn't do that in his plan is you simply have very narrow corridors in plans – for example, District 15, part of Hidalgo and going all of the way virtually to the outskirts of Houston to do that.

And other districts do that. Take a look at 32. 32 is north. It divides Comal and Guadalupe Counties and goes on up – my glasses don't focus so well, but it goes two counties further north of Guadalupe to get another one of these districts.

So, you subordinate compactness to the goal of getting an additional Hispanic majority district.

Q. Are there any other tradition redistricting

criteria that in your opinion are sacrificed in your 15 and 32?

A. There is much less regard for the traditional principles of not subdividing counties, not subdividing cities. For example, in Comal and Guadalupe Counties,

if you go down to the intense level of looking at the precincts in those particular counties and you look at the ethnic concentration of persons in those particular districts, you will see that the persons being put into District 23 are decidedly more Hispanic versus persons being put into the light district number, which I forget on this, are more Anglo. So, you are dividing Anglo versus Hispanics.

JUDGE HIGGINBOTHAM: Can you zero in on Comal and that somewhat uneven baseline there?

To the west of there, yes?

Q. (By Mr. Sudan) Is that what you are referring to?

A. Yes. And what the TLC has done, it has given me maps of the ethnic make-up of the precinct, VTDs in that area. And you see a high correspondence between Hispanics in district 32 and non-Hispanics in District 21.

* * *

November 1, 2001, Afternoon Session

* * *

[Testimony of Dr. John Alford]

Page 110

* * *

Q. (By Mr. Taylor) I want to very quickly, Dr. Alford, touch on two other subjects, and then we will be through. Do you have any opinions on whether seven

Page 111

Hispanic districts on the border should be drawn by this Court?

A. I think the approach of placing the additional Hispanic districts in the area of Dallas is probably preferable to the additional South Texas district. I think there are – I think the plan to have the additional district in South Texas is a bold plan. I think it raises some issues about spreading that vote a little bit. You marginalize a little bit some of those districts.

If you are willing to take the gamble, I'm not sure that's all that big a problem. But what concerns me is the idea of creating a little bit more marginal districts in order to add a district in that area. And then when the district doesn't work, what happens with a lot of these districts is their partisanship becomes more tightly balanced. And there is potential then for the district to elect a Republican. And when it elects a Republican Hispanic,

you come back and you've got to redraw the district again. You either accept that risk that the district may or may not elect a Democrat or you're going to be a little careful about plugging in additional districts that narrow the partisan balance in the existing districts.

* * *

Page 130

MR. SMITH: Let me ask you to put up District 23 then, Mr. Ware.

Q. (By Mr. Smith) Now, District 23 in the Texas Plan is very largely unchanged from its current configuration; is that right?

A. That is correct.

Q. And Mr. Bonilla is still in it?

A. That is correct.

Q. Mr. Bonilla, according to your estimates, has been getting between 20 and 25 percent of the Hispanic vote in this district in recent elections; is that right?

A. I think he goes higher than that.

Q. Let me represent to you that in your report, it says that in 1998 he got 26 percent of the Hispanic vote and in 2000 it says he got 20 percent of the Hispanic vote?

A. All right.

Q. According to your analysis, therefore, he is not the candidate of choice of the Hispanics in this districts?

A. That is correct.

Q. In fact, you conclude in your report, do yo

not, that as long as the district stays this way and Mr. Bonilla is in it – well, let me back up on that

Page 131

question.

You conclude in your report that a Republican candidate running in this district only has to get 10 percent of the Hispanic vote in order to easily win this district; is that right?

A. Again, remember that this district is – the majority of the registered voters in this district are Hispanic.

Q. Yes, sir.

A. As I said in the report, so long as Hispanic turnout remains as low as it is, there is a lack of interest, and there is Hispanic cross-over – with low turnout, it doesn't take much Hispanic cross-over to elect Bonilla or another Hispanic Republican in this district. I don't think an Anglo Republican would be able to do what Mr. Bonilla is able to do. But in this case, you have a situation where the Hispanic turnout is very low relative to the registered voter proportion. So that is, I think a failure of cohesion.

Q. You said in your report, and I don't think you are disagreeing with this now even, that even if Hispanics vote 90 to 10 for one candidate, the Democratic candidate, the Republican candidate would still easily win this district?

Page 132

A. Again, if you are turning out very low – and we've just been through some examples of that. If

you're turning out a very low proportion of your registered vote, then you can vote 100 percent. Cohesion is more than just how you cast those votes. It's turning out to vote and supporting your candidate.

Q. So you define cohesion to include turnout factor as well as a question of whether you all vote together?

A. Honestly, we all know – if we didn't know it before, we do now, what the purpose of the cohesion column in the James (phonetic) test is. It's in a sequential sense to establish what is the underlying cause of the deprivation of voting rights. If a group constitutes a majority of the district and is turning out that vote and voting together and still losing, then you look to the nature of the drawing of the district itself.

This is an example where this is a district where when that vote has turned out before has elected Hispanic candidate of choice, that Hispanic candidate of choice lost to another Hispanic, you've now got a situation where – again, that cohesive voting and turnout could reverse that result. It's not a district that can't be won by Democrats. It's won by

other Democrats.

Q. Just for the record, your estimate of the percentage of the voters in that district in recent elections who are Anglos is between 57 and 64 percent?

A. If that's what it says.

Q. Now, you also studied turnout in some of the other Latino majority districts along the border area.

And those are districts with Spanish surnamed registered voter totals in the 60 to 65 percent range as they are configured in Plan 1044; is that right?

A. That's right.

Q. Your estimates of turnout in those districts also showed a number of examples of recent elections where in those proposed districts even with registration levels in the 60 to 65 percent range, Anglos are still a majority of the actual voters on election day?

A. That is correct.

Q. And you opine – it's your view as well that in those kinds of districts, even when you get the registration level up to 60 percent, there is still a substantial chance that Hispanics will not be able to elect a candidate of choice if they don't remain very,0 very cohesive; is that right?

A. In several of those district, it is possible

Page 134

for a Hispanic Republican to get a majority of the vote because a Hispanic Republican draws more cross-over vote. And as the Hispanic turnout remain low and the willingness to cross over and vote for a Hispanic Republican is high or increasing, it raises the possibility in those districts.

* * *

Supreme Court, U.S.
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No. 01-1196

In the Supreme Court of the United States

SIMON BALDERAS, *et al.*,
Appellants,
v.
STATE OF TEXAS, *et al.*,
Appellees.

On Appeal from the United States District Court for the Eastern District of Texas, Tyler Division

MOTION TO AFFIRM

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QUESTIONS PRESENTED

1. Whether Appellants can establish §2 liability regarding the Texas Senate and congressional districts solely by drawing a seventh majority Spanish-surname-registered-voter (SSRV) border district that (a) subordinates the traditional districting principle of compactness to race and (b) causes decreases in Latino voting strength in other existing SSRV-majority districts, jeopardizing the districts' effectiveness.

2. Whether Appellants can satisfy the first *Gingles* precondition by drawing seven SSRV-majority Texas Senate districts that must be intentionally underpopulated, based on race, to add the seventh SSRV-majority district to the existing six.

3. Whether the three-judge court's per curiam opinions—which adequately state the factual and legal bases for the court's judgments in the congressional and Texas Senate redistricting cases—violate Federal Rule of Civil Procedure 52(a).

LIST OF PARTIES

Although Appellants properly list Henry Cuellar, in his capacity as Texas Secretary of State, as a party to the action below, he is not a party to this appeal because the current Texas Secretary of State is Gwyn Shea.

Former Texas Secretary of State Cuellar was originally named in his official capacity as a defendant below, but he resigned from office in late 2001. Geoffrey S. Connor then served as Acting Secretary of State, and he automatically substituted for Secretary Cuellar in the proceeding below. FED. R. CIV. P. 25(d)(1). For this appeal, however, the current Secretary of State, Gwyn Shea, is automatically substituted, in her official capacity, for Acting Secretary Connor. SUP. CT. R. 35.3.

TABLE OF CONTENTS

Page

Questions Presented i

List of Parties ii

Table of Contents iii

Table of Authorities iv

Statement of the Case 1

Argument 2

I. The Questions Presented Are Not Substantial and the Court Should Summarily Affirm 2

A. Appellants Mischaracterize the Basis for the Three-Judge Court's Rejection of Their §2 Claims 3

1. The three-judge court correctly rejected Appellants' request for a seventh SSRV border district that subordinates the traditional districting principle of compactness to race ... 3

2. The three-judge court correctly rejected Appellants' §2 claims under the "totality of the circumstances," finding that another effective Latino district could not be drawn 5

B. Appellants' Seven Proposed SSRV Senate Districts Are the Impermissible Product of Intentional, Race-Based Underpopulation 8

II. The Three-Judge Court's Factual Findings Satisfy Rule 52 and Are Sufficient for Proper Appellate Review .. 11

Conclusion 12

TABLE OF AUTHORITIES

Cases	Page
Abrams v. Johnson, 521 U.S. 74 (1997)	8
Burma Navigation Corp. v. Reliant Seahorse MV, 99 F.3d 652 (CA5 1996)	11
Bush v. Vera, 517 U.S. 952 (1996)	4, 5, 11
Folger Coffee Co. v. Olivebank, 201 F.3d 632 (CA5 2000)	11
Holder v. Hall, 512 U.S. 874 (1994)	9
Hunt v. Cromartie, 532 U.S. 234 (2001)	4
Johnson v. De Grandy, 512 U.S. 997 (1994)	6
Mahan v. Howell, 410 U.S. 315 (1973)	9
Miller v. Johnson, 515 U.S. 900 (1995)	5, 11
Shaw v. Hunt, 517 U.S. 899 (1996)	4
Shaw v. Reno, 509 U.S. 630 (1993)	4, 5, 8, 11
Six Clinics Holding Corp, II v. Cafcomp Sys., Inc., 119 F.3d 393 (CA6 1997)	12
Thornburg v. Gingles, 478 U.S. 30 (1986)	*passim*
Unt v. Aerospace Corp., 765 F.2d 1440 (CA9 1985)	11
Urbain v. Knapp Bros. Mfg. Co., 217 F.2d 810 (CA6 1954)	12
Wesberry v. Sanders, 376 U.S. 1 (1964)	9

Statutes, Rules, and Constitutional Provisions

FED. R. CIV. P. 25(d)(1) ii

FED. R. CIV. P. 52(a) 11

SUP. CT. R. 18.12 12

SUP. CT. R. 18.6 1

SUP. CT. R. 35.3 ii

In the
Supreme Court of the United States

SIMON BALDERAS, *et al.*,
Appellants,

v.

STATE OF TEXAS, *et al.*,
Appellees.

On Appeal from the United States District Court for the Eastern District of Texas, ~~Tyler Division~~

MOTION TO AFFIRM

Pursuant to Supreme Court Rule 18.6, the State of Texas, Texas Governor Rick Perry, and Texas Secretary of State Gwyn Shea (collectively "the State") move to affirm the judgment rendered by the three-judge court on the ground that the questions presented are so insubstantial as not to require further argument. SUP. CT. R. 18.6.

STATEMENT OF THE CASE

The State objects to the argumentative nature of Appellants' statement of the case and directs the Court to the statement of proceedings set out in the three-judge court's opinions as to the congressional and Texas Senate plans, which are fair recitations of the proceedings leading up to this appeal. J.S., App. at 1-4 (congressional plan), 21-24 (Texas Senate plan).[1]

1. Appellants' Jurisdictional Statement will be cited as "J.S."

ARGUMENT

I. THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL AND THE COURT SHOULD SUMMARILY AFFIRM.

The three-judge court correctly rejected Appellants' §2 claims in the congressional and Texas Senate redistricting litigation. App., at 11-12, 25-26. In each case, Appellants urged the creation of a seventh majority Spanish-surname-registered-voter (SSRV)[2] district along the Texas border.[3] To achieve this end, Appellants pulled SSRV from other currently effective Latino districts and contorted border population into a highly irregular, seventh SSRV district. The three-judge court properly recognized the impermissibility of Appellants' approach, and this Court should summarily affirm because: (1) a seventh SSRV border district cannot be created without subordinating the traditional districting criteria of compactness to race; (2) Appellants' inability to demonstrate the effectiveness of their seven proposed SSRV districts defeats their §2 claims under the "totality of the circumstances" test; and (3) Appellants' §2 challenge to the Texas Senate districts, in particular,

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2. Texas voters do not indicate their race or ethnic origin when registering to vote; therefore, there is no official record of the number of potential voters from different racial or language minority groups. The Texas Secretary of State does, however, compare voter registration lists to a list of common Spanish surnames and reports the number of Spanish-surnamed, registered voters in each Texas precinct.

3. Appellants' congressional and Texas Senate claims resemble each other because they involve a similar number of districts: 32 congressional seats and 31 Texas Senate seats. Consequently, essentially the same number and type of minority districts can be drawn in congressional and Texas Senate plans. Indeed, Appellants' Jurisdictional Statement does not present distinct §2 arguments regarding their congressional and Texas Senate claims. Accordingly, the State will jointly address Appellants' congressional and Texas Senate claims unless otherwise indicated.

fails because their seven proposed districts must be intentionally underpopulated to construct SSRV majorities, and this race-based strategy offends equal-protection principles.

A. Appellants Mischaracterize the Basis for the Three-Judge Court's Rejection of Their §2 Claims.

Appellants erroneously state that the three-judge court "held that Latinos were not *numerous* enough to constitute a 'majority' in an additional congressional district or an additional senate district" even though SSRV population in the proposed districts was 50% or greater. J.S., at 9 (emphasis added). They further mistakenly conclude that the court imposed an additional, impermissible requirement under *Thornburg v. Gingles*, 478 U.S. 30 (1986), that SSRV population exceed a voter majority "by an immeasurable amount." *Id.* But no such thing occurred.

The three-judge court's holding was not focused *solely* on numerosity, as Appellants suggest. Instead, the court concluded that "the Latino population is not sufficiently *compact* or numerous to support another, *effective* majority Latino citizenship district." App., at 14 (congressional), 26 (Texas Senate). In other words, the court identified two additional concerns—compactness and effectiveness—that defeat Appellants' §2 claims. And this Court's precedent fully supports the lower court's reasoning.

1. The three-judge court correctly rejected Appellants' request for a seventh SSRV border district that subordinates the traditional districting principle of compactness to race.

The court's first concern, compactness, renders Appellants' proposal impermissible on two levels. First, it demonstrates that Appellants cannot satisfy the first precondition under *Gingles*, which requires a §2 plaintiff to demonstrate that the protected minority group is "sufficiently large *and geographically compact* to constitute a majority in a single-member district." 478 U.S., at

50 (emphasis added). Second, it reveals that the creation of a seventh Latino border district would impermissibly elevate race over traditional districting principles, contravening *Shaw v. Reno*, 509 U.S. 630 (1993).

Along the Texas border, it is impossible to create a seventh Latino district that is reasonably compact. Although border areas have extensive Latino population, an additional Latino district cannot be achieved without dividing a naturally compact Latino population into separate components and then linking those components to non-Latino population from unrelated communities as much as two-hundred miles away. The racially manipulated, non-compact configuration that emerges confirms that there is no §2 obligation to construct a seventh Latino border district. "If, because of the dispersion of the minority population, a reasonably compact majority-minority district cannot be created, §2 does not require a majority-minority district." *Bush v. Vera*, 517 U.S. 952, 979 (1996); *see also Shaw v. Hunt*, 517 U.S. 899, 916 (1996) ("[A] plaintiff must show that the minority group is 'geographically compact' to establish §2 liability. No one looking at [North Carolina] District 12 could reasonably suggest that the district contains a 'geographically compact' population of any race. Therefore, where that district sits, 'there neither has been a wrong nor can [there] be a remedy.") (citations omitted).

Appellants contend that other equally or more non-compact districts have existed in Texas's past, J.S., at 19, but they fail to recognize that lack of compactness raises Fourteenth Amendment concerns when it results from race-based districting decisions. *See Shaw*, 509 U.S., at 647 (noting that equal-protection concerns would arise if a State "concentrated a dispersed minority population in a single district by disregarding traditional districting principles such as compactness, contiguity, and respect for political subdivisions); *see also, e.g., Hunt v. Cromartie*, 532 U.S. 234 (2001); *Bush*, 517 U.S. 952; *Miller v. Johnson*, 515 U.S. 900

(1995).[4] The three-judge court properly refused to create an additional border district that would have contravened *Shaw* and its progeny by subordinating compactness to race.[5]

2. The three-judge court correctly rejected Appellants' §2 claims under the "totality of the circumstances," finding that another effective Latino district could not be drawn.

Appellants erroneously argue that the three-judge court imposed a super-majority requirement under *Gingles*'s first prong when it concluded that "the Latino population is not sufficiently compact or numerous to support another, effective majority Latino

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4. These elongated SSRV border districts also pull in random pockets of Anglo population to fill out thinly majority-Latino districts. This type of practice was criticized in *Bush* in the context of "reach[ing] out to grab small and apparently isolated minority communities" to increase minority strength in a "bizarrely shaped district." 517 U.S., at 978. The same equal-protection principles preclude reaching out to grab isolated pockets of Anglo population to flesh out a district drawn to spread an otherwise overly compact minority population. Pulling in isolated pockets of Anglos is just as problematic as pulling in isolated pockets of minorities, because in both instances traditional districting criteria are subordinated to race. And that is the touchstone of an equal-protection violation. *See Shaw*, 509 U.S., at 650 (noting that equal-protection analysis is not dependent on the race of those burdened or benefitted by a particular classification).

5. Although this Court has assumed that compliance with §2 would be a compelling interest for purposes of strict scrutiny, *see Bush*, 517 U.S., at 977, that justification applies only when the creation of a majority-minority district "is reasonably necessary to comply with §2." *Id.* No such necessity exists here, because "[i]f, because of the dispersion of the minority population, a reasonably compact majority-minority district cannot be created, §2 does not require a majority-minority district." *Id.*, at 979.

citizenship district" in Texas. App., at 14, 26; *see also* J.S., at 9. But the court never stated that its "effectiveness" conclusion was a *Gingles* prong-one issue. Rather, effectiveness is part of the "totality of the circumstances" to be considered in evaluating Appellants' claim. *See* App., at 14-15, 26; *see also, e.g., Johnson v. De Grandy*, 512 U.S. 997, 1009-13 (1994); *Gingles*, 478 U.S., at 43 (quoting §2(b) of the Voting Rights Act).

Although Appellants declare that the three-judge court superimposed an effectiveness requirement onto *Gingles*'s first prong, nothing in the court's opinions supports this characterization. And Appellants fail to explain why the court's "effectiveness" finding must be linked to *Gingles*'s first prong, rather than the totality-of-the-circumstances test. Inexplicably, they simply assume that is what the court did. *See, e.g.*, J.S., at 13 n.3 ("Of course, the remainder of the *Gingles* framework also applies to such claims; however, with the exception of its conclusory statement regarding the 'totality of the circumstances,' the District Court here addressed only the first *Gingles* precondition."). This Court should reject Appellants' attempt to distort the three-judge court's effectiveness finding into an incorrect application of *Gingles*'s first prong.

The court's effectiveness finding is consistent with the State's totality-of-the-circumstances arguments at trial. Specifically, the State argued that §2 did not require the creation of an additional Latino district—under the totality of the circumstances—because there was no evidence that seven barely majority SSRV districts would be effective at electing Latinos' candidate of choice. There had been testimony, for example, that existing congressional District 23—with 53.2% SSRV—does not consistently elect Latinos' candidate of choice. Indeed, that district is currently represented by a Republican, Henry Bonilla, even though statistics show that the majority of Latino voters in District 23 consistently vote for his Democratic opponents. Because Representative Bonilla

was able to attract some otherwise Democratic Latino voters, he obtained a sufficient percentage to win the overall election. Thus, District 23's slim SSRV majority of 53.2% was ineffective for purposes of electing the candidate preferred by the majority of the district's Latino voters.

Because Appellants proposed seven Latino districts with slim SSRV majorities (due to the lack of sufficient population to create seven districts with greater-than-marginal SSRV majorities), Appellants' plan raised effectiveness concerns similar to those exemplified by District 23. Moreover, the seventh SSRV district exists only because Appellants dangerously reduced the number of Latinos in existing districts—jeopardizing the districts' ability to perform. Indeed, Congressman Charles Gonzalez testified that districts are not effective when SSRV majorities are stretched too thin—as they are in Appellants' proposals. Appellants offered no contrary electoral analysis that addressed, much less proved, the effectiveness of their seven proposed districts.

In addition, Appellants' strategy of stretching the existing six SSRV-majority districts into a seventh creates problems under §5 of the Voting Rights Act. Indeed, the three-judge court expressly noted this totality-of-the-circumstances concern in its Texas Senate opinion:

> "We further find that, under the totality of the circumstances, the failure to create a seventh Latino majority district will not prevent full and equal Latino participation in the political process. Rather, creating such a district would risk giving rise to retrogression in the existing Latino majority districts." App., at 26.[6]

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6. For example, current Senate District 27 has an SSRV population of 73.91%, but under Appellants' Plan 1194-S that number drops more than 20 percentage points to 52.13%. And under Appellants' alternative Plan 1206-S, District 27 drops even further to 50.45%.

Although federal-court plans may not be subject to preclearance, this Court has nonetheless advised federal courts to follow §5 requirements in fashioning remedial plans. *See, e.g., Abrams v. Johnson*, 521 U.S. 74, 96 (1997). The three-judge court correctly recognized that transforming currently performing Latino districts into nonperforming districts would raise §5 concerns, and it appropriately rejected Appellants' request for a seventh SSRV-majority district.

B. Appellants' Seven Proposed SSRV Senate Districts Are the Impermissible Product of Intentional, Race-Based Underpopulation.

Appellants' Jurisdictional Statement does not distinguish their §2 claims with respect to congressional and Texas Senate redistricting. And, for the most part, this approach is understandable because, in each context, the seven SSRV districts Appellants requested were similar due to the comparable number of districts in the two plans (*i.e.*, 32 congressional and 31 Texas Senate seats).

There is, however, one significant difference: an ideally populated Texas Senate district contains more population than a congressional district, since there is one fewer district across which to spread Texas's total population. And because of the increased size of Texas Senate districts, it is possible to create seven majority SSRV districts only if those districts are intentionally underpopulated to enhance SSRV.[7] Because such intentional, race-based redistricting runs afoul of *Shaw v. Reno* and its progeny—and because there is insufficient population to create seven SSRV districts in the absence of race-based population adjustments—the three-judge court correctly concluded that the "Latino population

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7. For example, if a fully populated district contained 100 persons of whom 48 are Spanish-surnamed registered voters, SSRV would be 48%. But if the district were intentionally underpopulated to contain only 95 persons, the same 48 Spanish-surnamed registered voters would constitute an SSRV majority of 50.5%.

is not sufficiently compact or numerous to support another, effective majority Latino citizenship district" in the Texas Senate plan. App., at 26.

Ideal district size—*i.e.*, the per-district population that will produce 31 equally populated Texas Senate districts—is the appropriate starting point for analyzing Appellants' §2 claim. Indeed, it is the only truly objective benchmark against which to measure Appellants' allegations of vote dilution. *See Holder v. Hall*, 512 U.S. 874, 880 (1994) (plurality) ("[In] determining whether the *Gingles* preconditions are met and whether the totality of the circumstances supports a finding of liability, a court must find a reasonable alternative practice as a benchmark against which to measure the existing voting practice."); *see also id.*, at 887 (O'Connor, J., concurring) (noting the Court's "general agreement" that "courts must choose an objectively reasonable alternative practice as a benchmark for the dilution comparison"). The ideal population for a Texas Senate district is 672,639—which is approximately 3% larger than an ideal congressional district.[8]

Although an ideal Texas Senate district is larger than a congressional district, the total available Latino population remains the same for the congressional and Texas Senate plans. And that population—which was barely adequate to create seven SSRV majorities in the smaller congressional districts—is insufficient to create seven SSRV majorities in a fully populated Texas Senate district. Indeed, SSRV majorities can be preserved only if Texas Senate districts are intentionally underpopulated to more closely resemble the size of a congressional district. And that is precisely

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8. Texas's 32 congressional districts are constitutionally required, under Art. I, §2, to consist of equal population "as nearly as is practicable." *Mahan v. Howell*, 410 U.S. 315, 320 (1973) (quoting *Wesberry v. Sanders*, 376 U.S. 1 (1964)). By contrast, the 31 Texas Senate districts are subject to the population-equality demands of the Fourteenth Amendment's Equal Protection Clause, which is slightly less rigorous. *See, e.g., id.*, at 321-22.

the race-based strategy that Appellants' urged and that the three-judge court correctly declined to follow.

All seven Latino districts in Appellants' proposed Plan 1194-S are underpopulated—including the four most underpopulated districts in the State and five of the top six. Together, these districts result in a total underpopulation of 26.49%—more than a quarter of an ideal district. In other words, to achieve their goal of an additional SSRV district, Appellants' essentially stretched six and three-fourths Texas Senate districts into seven.[9] This attempt to satisfy *Gingles*'s population threshold through manipulation of district size was properly rejected by the three-judge court. Because Appellants failed to demonstrate that seven SSRV districts could be drawn under the proper benchmark—an ideally populated Texas Senate district—they did not satisfy the first prong of *Gingles*.[10] Accordingly, the three-judge court correctly rejected their §2 claim.

Moreover, the court properly declined to embrace Appellants' strategy of intentional, race-based underpopulation. Such elevation

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9. Appellants offered an alternative plan (1206-S) that was less egregious, but it still produced an underpopulation of 19.38%—nearly one-fifth of a district.

10. Appellants acknowledge that they framed their §2 claims in terms of SSRV districts. J.S., at 17 n.6. Yet, at the same time they complain that the three-judge court used the very standard they proposed in its §2 analysis, rather than the Fifth Circuit's benchmark of citizen voting age population (CVAP). J.S., at 15. This complaint is disingenuous because Texas's Latino CVAP numbers are not yet available and, therefore, were neither offered by Appellants at trial nor utilized in the three-judge court's analysis. The closest proxy, SSRV, was available because, as Appellants note, the Texas Secretary of State collects and reports these statistics. J.S., at 14 n.4. And, under these circumstances, Appellants chose to use SSRV numbers in framing their §2 claims. The three-judge court did not disregard Fifth Circuit CVAP precedent or impose an "unprecedented" burden under the first *Gingles* precondition, as Appellants erroneously contend. J.S., at 17.

of race over traditional districting criteria offends equal-protection principles. *See, e.g., Bush*, 517 U.S., at 958-59, 962-64; *Miller*, 515 U.S., at 905, 911-12; *Shaw*, 509 U.S., at 644-49.[11] Because Appellants cannot establish seven SSRV districts in the absence of impermissible race-based underpopulation, this Court should summarily affirm the lower court's judgment rejecting Appellants' §2 challenge to the Texas Senate districts.

II. THE THREE-JUDGE COURT'S FACTUAL FINDINGS SATISFY RULE 52 AND ARE SUFFICIENT FOR PROPER APPELLATE REVIEW.

The Court should reject Appellants' final argument that the three-judge court failed to comply with Federal Rule of Civil Procedure 52. The per curiam opinions in the Texas Senate and congressional redistricting cases satisfy Rule 52 and permit proper appellate review by "'giv[ing] the reviewing court a clear understanding of the factual basis for the decision.'" *Folger Coffee Co. v. Olivebank*, 201 F.3d 632, 635 (CA5 2000) (quoting *Burma Navigation Corp. v. Reliant Seahorse MV*, 99 F.3d 652, 656 (CA5 1996)); *Unt v. Aerospace Corp.*, 765 F.2d 1440, 1444 (CA9 1985) (holding that remand was not necessary, even though findings did not articulate specific factual bases for holding, because the basis for the court's decision was clear); *see also* FED. R. CIV. P. 52(a).

Moreover, even if the Court were to decide that the findings in the per curiam opinions were somehow deficient, remand would not be necessary because "'the failure of a District Court to comply with Rule 52(a) in respect of findings of fact does not demand reversal of the correct judgment . . . if a full understanding of the

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11. As previously discussed, the Court has assumed that compliance with §2 would be a compelling interest for purposes of strict scrutiny—but only when the creation of the minority-majority district is "reasonably necessary to comply with §2." *Bush*, 517 U.S., at 977. No such necessity exists with respect to the Texas Senate districts, because Appellants did not demonstrate that the seven SSRV districts they request are possible using the proper benchmark of an ideally populated district.

issues could be reached without the aid of findings even though such findings would have been helpful.'" *Six Clinics Holding Corp, II v. Cafcomp Sys., Inc.*, 119 F.3d 393, 400 (CA6 1997) (quoting *Urbain v. Knapp Bros. Mfg. Co.*, 217 F.2d 810, 815 (CA6 1954)). Because a full understanding of the issues is easily obtained from the per curiam opinions, the Court should not reverse and remand for additional factfindings in support of the lower court's Texas Senate and congressional judgments.

CONCLUSION

The Court should summarily affirm the judgments of the three-judge court. SUP. CT. R. 18.12.

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In The

Supreme Court of the United States

SIMON BALDERAS, GILBERTO Z. TORRES and TEXAS LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

Appellants,

v.

STATE OF TEXAS, ET AL.,

Appellees.

On Appeal From The United States District Court For The Eastern District Of Texas

REPLY TO MANLEY MOTION TO DISMISS

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21pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

ARGUMENT 1

I. THE DISTRICT COURT DID NOT ADOPT MANLEY'S "EFFECTIVENESS" TEST 3

II. THE DISTRICT COURT DID NOT REJECT PLAINTIFFS' DEMONSTRATION OF EFFECTIVE DISTRICTS 7

III. CONGRESSIONAL DEMOCRATIC INCUMBENTS SEEK TO USE SECTION 2 FOR PARTISAN ENDS 8

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Statewide Reapportionment Advisory Committee v. Theodore, 508 U.S. 968 (1993) 2

Thornburg v. Gingles, 478 U.S. 30 (1986) 1, 2, 3, 4, 7

Valdespino v. Alamo Hts. Independent Sch. District, 168 F.3d 848 (5th Cir. 1999), *cert. denied*, 528 U.S. 1114 (2000) 3

ARGUMENT

Like the State of Texas, appellee Brian Manley moves to affirm summarily the District Court decision rejecting plaintiffs' claims under section 2 of the Voting Rights Act (VRA) on the basis of the single, undefined term "effective" in the court's opinion. The most natural reading of the term is as part of a simple reiteration of the first precondition to Section 2 liability, as established in *Thornburg v. Gingles*, 478 U.S. 30 (1986), yet Manley would instead conjure out of that isolated term a whole series of unstated fact findings and legal conclusions with respect to district "effectiveness."

A review of the District Court decision, its actions, and the evidence it considered proves Manley's conjuration a true phantom. Plaintiffs satisfied every established test for the first *Gingles* precondition, and even produced evidence of practical "effectiveness" as to their proposed Latino voter-majority districts; furthermore, the court's own adopted congressional map refutes any contention that the panel credited the State's and Manley's scant testimony of purported ineffectiveness.

By presenting compact voter-registration Latino majority districts, plaintiffs passed every test that any federal court has ever endorsed to determine the first *Gingles* precondition. The District Court, therefore, quite simply erred in concluding otherwise. While the court's failure to provide adequate findings and conclusions precludes a complete understanding of what test the court did apply, what it did not apply – namely, any established test for the first *Gingles* precondition – is much clearer.[1]

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[1] Perhaps cognizant of the incompatibility of any "effectiveness" test he urges with the first *Gingles* precondition, Manley also asserts that the District Court applied its "effectiveness" test in ruling on the "totality of the

Moreover, beyond the first *Gingles* precondition, plaintiffs' proposed districts satisfied every conceivable practical test of "effectiveness." In Texas, historically, simple Latino voting-age majorities, not to mention the registered-voter majorities plaintiffs offered, have provided Latinos the opportunity to elect candidates of choice. Plaintiffs bolstered this history, which was undisputed and amply demonstrated at trial, with additional evidence of "effectiveness" in the form of re-aggregated election results. Manley, in contrast, offered "ineffectiveness" evidence of a decidedly different kind.

Manley's attempt to protect the District Court's 32-seat congressional map from plaintiffs' challenge contrasts sharply with his non-opposition to plaintiffs' challenge to the quite similar 31-seat state senate map. The reason lies in the partisan concerns of Democratic Congressmen who intervened in the litigation to protect their incumbency and who now move through Manley only to affirm the District Court's congressional redistricting plan. Plaintiffs' proposed congressional districts have the potential to threaten current members of the Texas Democratic delegation,[2] while plaintiffs' proposed senate districts pose no similar threat. Not surprisingly, then, Manley's effectiveness evidence centers on party indices in plaintiffs' proposed congressional districts.

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circumstances." However, neither Manley nor the State can cite a single case in which a District Court was allowed to "skip over" the *Gingles* preconditions and arrive at "totality" without findings on majority status, cohesive voting or white bloc voting. This Court's decision to remand a similar case for failure to apply the *Gingles* analysis is directly on point. *See Statewide Reapportionment Advisory Comm. v. Theodore*, 508 U.S. 968 (1993).

[2] For example, the creation of a seventh Latino majority congressional district in South Texas would push the district of Democratic incumbent Charles Stenholm into the Texas Hill Country, an area with many Republican voters.

While such partisan concern in a state where Congressional Democrats are losing ground might be understandable, the Voting Rights Act (VRA) countenances no such parochial interest. Under section 2 of the VRA, the overriding consideration is to remedy minority vote dilution, not to maximize re-election. Yet, Manley's "effectiveness" test would elevate partisan interests over these voting rights. The test would even convert matters long considered evidence of potential vote dilution – such as low minority registration rates or low turnout – into phenomena that block any chance of success in proving dilution – and concomitantly block any chance to address low levels of political participation through a section 2 remedy. Manley would create such a topsy-turvy world, all in service of narrow partisan interests.

This case requires plenary review in order to ensure that such partisan-inspired doctrines did not affect the District Court's largely unexplained decision, and to forestall these attempts in the future.

I. THE DISTRICT COURT DID NOT ADOPT MANLEY'S AND THE STATE'S "EFFECTIVENESS" TEST

Manley, like the State, concedes that the District Court failed to apply any established "majority" test for the first *Gingles* precondition to plaintiffs' proposed districts.[3] Yet, rather than acknowledge that this omission

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[3] "[T]he District Court did not address the question whether a court should look to voter registration data, voting-age population (VAP) data, or citizen voting-age population (CVAP) data in analyzing *Gingles'* first prong." Manley Motion at 8-9. Of course, the Fifth Circuit had long before answered the question. *See Valdespino v. Alamo Hts. Indep. Sch. Dist*, 168 F.3d 848, 852-53 (5th Cir. 1999), *cert. denied*, 528 U.S. 1114 (2000) ("a bright line test" of greater than 50% citizen voting age population).

represents legal error, Manley and the State seize on the single word "effective" in the court's exceedingly brief section 2 holding to argue that the District Court adopted some unexplained "effectiveness" test and applied it in their favor. The fact that the court's use of "effective" seems to be simply *Gingles* boilerplate, rather than the application of any new "test"under the first precondition, is only the first of the problems with Manley's contention.[4] It is equally unlikely that the court adopted any "effectiveness" contention in cursorily reaching its conclusion as to the "totality of the circumstances."[5]

The District Court's failure to specify which, if any, of plaintiffs' proposed Latino majority districts were insufficiently "effective" eliminates any ability fully to understand and explain what "evidence" of "effectiveness" the court adopted. This, of course, re-emphasizes the importance of the court's failure to provide adequate findings. Still, both the State and Manley seek summary affirmance based on their argument that plaintiffs' proposed Congressional District 23 was "ineffective." However, at trial the District Court heard "effectiveness" arguments with

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[4] The type of "effectiveness" issue that Manley raises is one for the remedial phase. The registration-majority districts that plaintiffs proposed to satisfy the first precondition are not necessarily what a court would ultimately adopt as a remedy. The threshold first *Gingles* precondition serves a different purpose – making certain that dilution actually poses a potential for harm – that is not consistent with an evaluation of "effectiveness" as Manley uses the term.

[5] As discussed more fully in plaintiffs' reply to the State's Motion to Affirm, the structure of the court's senate decision demonstrates that the court's reference to "effective" can not relate to its "totality" conclusion. While Manley does not seek to affirm the senate decision, the similarities between the congressional and senate districting issues makes the two largely indistinguishable.

respect to the 1990's version of District 23, adopted by the Texas Legislature, and rejected those arguments in crafting its remedial congressional plan. This rebuff precludes Manley's contention that the court adopted his effectiveness views and precludes the State from adopting Manley's effectiveness arguments on appeal.[6]

The trial record demonstrates that Congressional District 23 elected Albert Bustamante in 1984 with a Latino *voting age* population of 51.1 percent. In 1992, hounded by scandal, Representative Bustamante lost to a Latino Republican challenger in a District 23 containing a 58.3 percent Latino voting age population. At trial, Manley characterized District 23 in the 1990's plan as "ineffective," attacked plaintiffs' proposal for District 23 as similarly "ineffective" and urged the District Court to increase the percentage of Democratic voters in the district.

In its remedial plan, the District Court slightly increased the majority of Latino registered voters in District 23 to 53.8% and increased the Republican vote index to 58.3%. Under the Manley analysis, the District Court's addition of Republican voters to the baseline District 23 rendered it even more "ineffective" than the district of the 1990's. The court's decision to increase the Republican vote index of its District 23, while designating its District 23 as one of the "Voting-Rights-Act-protected majority-minority districts" (J.S. App. 5), reveals that the District Court rejected any argument that District 23 required a

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[6] At trial, the State offered no evidence challenging the effectiveness of any of plaintiffs' proposed Latino majority districts. On the contrary, the State's expert, Dr. John Alford, noted that while plaintiffs' proposed districts narrowed the Democratic partisan margins of some South Texas districts, "I'm not sure that's all that big a problem." Manley App. 17a.

higher Democratic vote index in order to be effective. The District Court's evident conviction that District 23 offered Latino voters the opportunity to elect their candidate of choice with a lower Latino voter majority and higher Republican vote index than that proposed by plaintiffs renders untenable Manley's and the State's claim that the District Court rejected plaintiffs' proposed District 23 as ineffective.

In addition, Manley alone suggests that the District Court found plaintiffs' proposed Congressional District 20 to be insufficiently effective, based on the testimony of Democratic incumbent Charles Gonzalez. Gonzalez testified that "districts with Spanish-surname registration at or just above 50% would not be winnable districts for Latino-preferred candidates" (Manley Motion at 16), but his non-expert testimony was internally inconsistent, as he admitted that Congressional District 20 had elected his father continuously since 1961, long before it achieved a majority of Latino registered voters in 1994. App. 7. Gonzalez further testified that he himself could win re-election in the Congressional District 20 proposed by plaintiffs. Even more revealing was Gonzalez's testimony that the inclusion of more suburbs in plaintiffs' proposed District 20 would force him to work harder to win re-election. Manley App. 8a. But, this self-serving incumbent "comfort" factor is simply not a relevant consideration under the Voting Rights Act.

Manley and the State are unable to point to any evidence in the record or any language in the District Court's decision and remedial plan indicating that the District Court believed that proposed districts containing Latino registered voter majorities would be "ineffective."

II. THE DISTRICT COURT DID NOT REJECT PLAINTIFFS' DEMONSTRATION OF EFFECTIVE DISTRICTS

The seven Latino voter-majority districts proposed by plaintiffs, while reducing the super-majorities that ensued from Latino population growth over the past decade, maintained an effective Latino voting majority and the concomitant ability to elect the Latino candidate of choice in each of the districts.

All of the South Texas congressional and senate districts that plaintiffs proposed contained a majority of Latinos eligible and qualified to go to the polls and cast a vote on election day. This Latino majority of registered voters exceeds both the Fifth Circuit's population threshold for the first *Gingles* precondition (citizen voting age population (CVAP) majority) and, on a practical level, far exceeds the historical threshold for effective Latino voting majorities in Texas.[7]

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[7] Demographic tables introduced by plaintiffs and the Valdez-Cox intervenors at trial demonstrated that, historically, Latinos have formed effective voting majorities in Texas districts with over 50 percent Latino voting age population, an even lower threshold than CVAP:

Latino Voting Age Population in Congressional Districts Electing a Latino

Congressional District	1980 Census	1990 Census	Plaintiffs' Proposal
District 15	66.1%	69.6%	64.8%
District 16	54.9%	66.4%	74.7%
District 20	55.7%	56.1%	58.0%
District 23	51.1%	58.3%	65.7%
District 27	55.4%	61.4%	66.1%
District 28	none	56.5%	55.6%
District 32	none	none	60.9%

Plaintiffs, having demonstrated more than what *Gingles* requires, were the only party to introduce re-aggregated election results to demonstrate without the slightest doubt the ability of Latino voters to elect their candidate of choice in plaintiffs' proposed districts.[8] Examining racially-contested statewide elections during the 1990's, the plaintiffs showed that the actual votes cast in those elections, in the precincts comprising the plaintiffs' proposed Latino-majority districts, gave victories to Latino-preferred candidates in 1992, 1994 and 1996. Statewide candidates Pete Benavides in 1992, Dan Morales in 1994, and Victor Morales and Hector Uribe in 1996, garnered a majority of the votes cast within each of the proposed congressional districts.

In sum, even assuming that the District Court meant more by including the term "effective" than to reiterate a widely-used description of the first *Gingles* precondition, plaintiffs' proposed districts satisfied any conceivable "effectiveness" standard.[9]

III. CONGRESSIONAL DEMOCRATIC INCUMBENTS SEEK TO USE SECTION 2 FOR PARTISAN ENDS

Rather than any coherent notion of "effectiveness" from the perspective of the Latino community, Manley

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[8] Manley flatly misstates the record below in asserting that plaintiffs "chose not to introduce any evidence in the congressional portion of the case concerning effectiveness." Manley Motion at 14-15.

[9] Even Dr. Alan Lichtman, upon whom Manley and the congressional Democrats relied, concluded in his expert report that plaintiffs' proposed congressional plan "unpacks District 15, although it is maintained as a fully effective Hispanic district. As a result . . . the alternative plan creates an additional (seventh) Hispanic opportunity district in this region[.]" App. 7. Moreover, at trial, Dr. Lichtman conceded that his own analysis of re-aggregated elections proved that Latino-preferred candidates won the majority of racially-contested elections in all of plaintiffs' proposed districts. App. 6.

urges a radical revision of section 2 that would utilize *Democratic* electoral success as the measure of minority opportunity to elect. This approach to the creation of majority minority districts is not supported by the Court's precedent, stereotypes Latino political views, and limits the creation of Latino-majority districts to the convenience of one political party, even in the face of abundant evidence that Latino voters in those districts would possess the opportunity to elect their candidates of choice.[10]

While disclaiming this partisan agenda, Manley offered no analysis of the low Latino voter turnout that they asserted would render districts ineffective, offered no explanation for their claim that Latino voters in one proposed district would fail to vote at the same rate as Latino voters in the neighboring district, and did not ask their expert to examine how Latino voter turnout might vary within a district. App. 3.

Committed to regaining a majority within the United States House of Representatives, the desire of Democratic incumbents, working through Manley, to maintain the incumbent status quo in states where their party is losing ground is certainly understandable. However, it is not a relevant concern with respect to a Voting Rights Act claim.[11]

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[10] Congressional Democratic incumbents presented their partisan "effectiveness" analysis through Dr. Lichtman, who testified that: he judged that African American plurality districts that were "substantial Democratic districts" were effective; one aspect of his effectiveness analysis is party label; to evaluate effectiveness of Latino-majority districts, he "always looked at the Democratic performance"; and that sufficient Democratic strength is a factor of his analysis of effectiveness for Latino-majority districts. App. 1.

[11] This does not mean that partisanship is never a relevant concern under the VRA. As suggested above, it may be a relevant concern with respect to remedy, for example, when a

Quite simply, section 2 is not a tool to be manipulated to serve partisan concerns.[12]

Respectfully submitted,

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court may take into account a minority group's ability to control the outcome of a party primary in a district that heavily favors that party. The critical difference is that, in that circumstance, voting rights concerns motivate the partisan inquiry. Here, by contrast, Manley seeks a regime in which partisan concerns motivate and determine voting rights outcomes.

[12] Similarly, the District Court's preservation of the current district boundaries of six incumbents (including Rep. Charles Stenholm) with "substantial leadership positions in the House" (J.S. App. 8) would be reversible error if the concern trumped plaintiffs' VRA claims.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL	*	CIVIL ACTION NO.
VS.	*	6:01-CV-158
STATE OF TEXAS, ET AL	*	Austin, Texas

(This Filing Applies to all Actions)

TRANSCRIPT OF BENCH TRIAL
BEFORE
THE HONORABLE PATRICK E. HIGGINBOTHAM,
THE HONORABLE JOHN HANNAH, JR.
AND
THE HONORABLE T. JOHN WARD

* * *

October 23, 2001, Morning Session

[Testimony of Dr. Allen J. Lichtman]

[74] JUDGE HIGGINBOTHAM: What do you characterize as effective district expressed quantitatively a district expressed percentage of Democratic vote or how are you –

A. Yes, I looked at it in several different ways for African-American districts. These districts have an African-American plurality or close to it. In looking at the Overstreet election that was in the Democratic primaries. Mr. Overstreet received 19 percent of the votes statewide. In the districts that I characterize as fully effective African-American districts, he received an outright majority of the vote in the Democratic primary in those districts quantitatively and African-American were the

predominant turnout in the Democratic primary; and finally all of those districts [75] are substantial Democratic districts.

* * *

October 23, 2001, Afternoon Session

[Testimony of Dr. Allen J. Lichtman]

[20] Q. Okay. Now, you use a term and you call that term an "effective district." Can you define for me what an effective district is?

A. Yes. As I defined it in my direct, I said it is somewhere between a toss-up equally competitive district and a safe or a locked district. It's a district that provides at least reasonable opportunities for African-Americans on the one hand or Hispanics on the other hand to elect candidates of their choice.

Q. Okay. An effective district – does the effective district have anything to do with a Democratic or Republican label?

A. That can be part of it.

Q. No, I am asking you from your definition, you used the term, does the effective district relate to party labels?

A. The definition does not; the analysis does.

Q. Okay. So you analysis is based on party label?

A. That is one aspect. It is not the complete analysis.

* * *

[31] Q. In the 23nd Congressional District, a Hispanic has gotten elected five times; is that correct?

A. Yes.

Q. And, in fact, you decided or in your analysis you concluded that Mr. Bonilla was not the choice of the Hispanic community; is that correct?

A. That's what the data shows, yes.

Q. So in that situation, since the choice of the [32] Hispanic community is not realized, then it's not a Hispanic opportunity district, is it?

A. For that and other reasons.

Q. But you don't know any other reasons because you didn't spend any time looking at what the turnout is in northside San Antonio versus Laredo, what the number of registered voters are in San Antonio and versus Laredo versus the turnout, did you?

A. Well, the turnout in the entire election, and that's what the election depends upon. I always looked at the Democratic performance and the performance of the Hispanic Democratic candidates.

Q. But you did not spend anytime looking at the nuances of the district, what is going on northside San Antonio and what is going on Laredo, did you?

A. I did not get into pieces of the district, no.

* * *

[155] Q. With respect to effectiveness, you're not suggesting in your testimony, are you, that the Court go out of it's way specifically to draw a Democratic district in order to meet your standard of effectiveness?

A. I'm not suggesting the Court go out of its way to do anything. I am suggesting that any effective district has do two things: It has to enable a minority candidate of choice to be nominated and it has to enable a minority candidate of choice to be elected to public office. Nomination alone would not satisfy that.

Q. But you do discuss effectiveness in terms of having sufficient Democratic strengtn, don't you?

A. That is one factor because of the polarized voting that we have observed in general elections.

[156] Q. Isn't the general gist of your testimony that the Court has to consciously draw partisan districts in order to afford the opportunity to elect?

A. No, that is not the gist of my – the Court can draw a balanced map and still provide minorities opportunities to elect candidates of their choice.

Q. You are saying balances overall, but you're telling the Court they have to specifically go out and draw Democratic districts for Latinos, aren't you?

A. I am saying they have to check and see if the Latinos can win in the general election, as well as in the primary, yes. And that would require some attention to the partisan composition of the districts, yes.

Q. You had earlier in your testimony today defined effectiveness as providing a reasonable opportunity to elect a candidate of choice, correct?

A. Yes.

Q. You also stated earlier not every single election has to be won by the Latino candidate of choice in order for the district to provide the opportunity to elect?

A. That's right. There can be exceptional elections.

Q. I'm going to hand out a handout, which is marked Balderas Exhibit 105.

[157] MS. PERALES: And I will beg the Courts' indulgence to follow along as I pass up copies (tendering).

Q. (By Ms. Perales) I am also going to hand out reaggregated election sheets for Plan 1099, which is the backup material for the summary sheet, but all I want to do is go over the summary sheet with you, Dr. Lichtman.

A. I have no problem with working on this summary sheet, Ms. Perales.

Q. I would like to talk about the Latino majority districts that are created in Plan 1099 with you.

A. Yes.

Q. With respect to Congressional District 20, do you observe that Congressional District 20, as it's currently configured the way it has been configured, has risen since 1992 from Spanish surname voter registration of 48.7 to a Spanish surname voter registration of 57.9 in the year 2000?

A. Presuming these numbers are correct, that's right.

* * *

Q. And with respect to the races that are represented in this summary sheet, do you see that the Latino candidates of choice are winning four out of six of these elections?

A. I do.

Q. And, similarly, in the next page with respect to Congressional District 23 as proposed in Plan 1099?

A. Yes. Although, there in the last three elections you have two right at 50 and one loss.

Q. Nevertheless, there are four wins and two losses, correct?

A. That is correct.

Q. And, now, simply with respect to the remaining Districts –

A. Yes.

Q. – 15, 16, 27, 28, and 32, they are all won by the Latino candidates by the Latino candidates of choice –

A. That is correct.

[160] Q. – of those races?

A. That is correct.

* * *

Q. You did state in your report, did you not, that Plan 1099 creates an additional seven Hispanic opportunity districts in South and West Texas region?

A. Yes.

* * *

October 25, Afternoon Session

[Testimony of Congressman Charles Gonzalez]

[128] Q. And back in 1994, your father, may he rest in peace, won reelection to Congress with about 63 percent of the vote; that's correct?

A. I'm not going to debate that. I'm sure it would be somewhere in that number.

Q. I think it was pointed out by Mr. Rios [129] previously, that was when District 20 actually had only 50.1 percent Spanish surname registration?

A. If that's what the figures show, I'm sure that's true.

Q. Something similarly exciting happened in 1996 when your dad won again with 64 percent of the vote when the registration was only 50.7, correct? And then –

A. In '98 I won.

Q. Yes, '98 you won.

A. And the Spanish surname registered voters would be at what, 56?

Q. 56.4. There was really quite a jump from '94 to '96. The Spanish surname registration went up more than five points.

A. Right. Did I win by the same percentage as my father?

Q. Yes.

A. When we had fewer Spanish –

Q. Yes, yes, you did. And then perhaps most exciting in 2000 when the registration was 58 percent, you won your reelection with 88 percent of the vote.

A. I didn't have any opposition –

Q. I understand.

A. – to speak of. I would love to brag, but I [130] didn't –

* * *

No. 01-1196

Supreme Court, U.S.
FILED
APR - 2 2002
OFFICE OF THE CLERK

In The

Supreme Court of the United States

SIMON BALDERAS, GILBERTO Z. TORRES and TEXAS LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

Appellants,

v.

STATE OF TEXAS, ET AL.,

Appellees.

On Appeal From The United States District Court For The Eastern District Of Texas

REPLY TO TEXAS MOTION TO AFFIRM

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

ARGUMENT 1

I THE DISTRICT COURT ERRED IN REJECTING PLAINTIFFS' PROPOSED DISTRICTS THAT WERE EQUALLY OR MORE COMPACT THAN COURT-ADOPTED DISTRICTS 2

II THE DISTRICT COURT DID NOT RELY AND COULD NOT HAVE RELIED ON *SHAW* CONCERNS 5

III PLAINTIFFS' PROPOSED SENATE DISTRICTS PARALLEL TEXAS STATE PRACTICES 8

IV THE STATE'S MOTION FURTHER PROVES THE INADEQUACY OF THE DISTRICT COURT'S FINDINGS 9

TABLE OF AUTHORITIES

Page

CASES

Bush v. Vera, 517 U.S. 952 (1996) 5, 6, 7

Bush v. Vera, 933 F.Supp. 1341 (S.D. Tex. 1996) 4

Holder v. Hall, 512 U.S. 874 (1994) 8, 9

Hunt v. Cromartie, 532 U.S. 234 (2001) 5

Miller v. Johnson, 515 U.S. 900 (1995) 5

Shaw v. Reno, 509 U.S. 630 (1993) 1, 5, 7, 9

Thornburg v. Gingles, 478 U.S. 30 (1986) 1, 2, 3

Vera v. Richards, 861 F.Supp. 1304 (S.D. Tex. 1994), *aff'd*, 517 U.S. 952 (1996) 5, 6

ARGUMENT

Despite its contrary aim, the State of Texas' Motion to Affirm ("Texas Motion") further demonstrates why this case requires plenary review. Faced with a brief and partially inscrutable four-sentence disposition of plaintiffs' claims, the State must both defend the District Court's failure to make findings to support and explain its decision, and explain why the court's evident failure to follow established standards under the first section 2 precondition does not warrant reversal.

The State responds to this conundrum by proffering an unsupportable, revisionist reading of the District Court decision. Even though the court used terminology that, over the years, has become synonymous with the first precondition from *Thornburg v. Gingles*, 478 U.S. 30 (1986), the State argues that the court's conclusion actually rested on the "totality of the circumstances" and on constitutional concerns, emanating from *Shaw v. Reno*, 509 U.S. 630 (1993), purportedly raised by the configuration of plaintiffs' proposed Latino-majority districts. While the State's scanty defense of the court's express *Gingles* prong one conclusion implicitly concedes trial court error, the State's alternative, revisionist reading founders on two immovable barriers – established Voting Rights Act precedent and the District Court's own actions.

The purported constitutional concerns simply have no application at the liability stage of a section 2 case. Yet, because the court's decision cannot possibly be read to have reached remedy considerations, the State untenably asserts that these concerns are relevant to compactness analysis under *Gingles* prong one. Equally problematic, the wording of the District Court's decision, as well as the court's own redistricting plan belie any consideration of the State's argued constitutional concerns.

Similarly flawed, the State's assertion that the appealed decision rested on an analysis of "totality" cannot be reconciled with the court's failure to discuss any *Gingles* precondition besides the first, and its omission of discussion of any Senate factor. Moreover, the State's assertion that the court's reference to "effective" districts is anything other than a mis-application of *Gingles* one misreads the language of the District Court's own ruling.[1]

The State's Motion raises more questions about the District Court decision than it answers; rather than supporting summary affirmance, it reiterates the plaintiffs' call for this Court's review.

I. THE DISTRICT COURT ERRED IN REJECTING PLAINTIFFS' PROPOSED DISTRICTS THAT WERE EQUALLY OR MORE COMPACT THAN COURT-ADOPTED DISTRICTS

The 2000 Census revealed that, since 1990, the six Latino-majority congressional districts in South Texas had grown by over 700,000 residents. Measured against the new ideal population for Texas congressional districts, the six districts were still overpopulated by 189,043 persons. In addition, counties neighboring the Latino-majority districts experienced strong population growth and

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[1] At page 3 of its Motion, the State disingenuously highlights – and fails to note that this emphasis was not in the original – the words "compact" and "effective" in one sentence from the District Court decision. While this surreptitious adding of emphasis tellingly omits "numerous" from its highlights, the State also fails to reckon with the succeeding sentence in the Senate decision, which begins "We *further* find that, under the totality of the circumstances. . . . " J.S. App. at 26 (emphasis added). The State never explains how its asserted "effectiveness" concern, which it takes from the preceding sentence, should be read as included in a subsequent "further" finding as to totality.

share many social, historical, and economic characteristics with their southerly neighbors.

Geography, combined with rapid Latino population growth, presented only two redistricting options for South Texas in 2001: contract the existing Latino districts toward the U.S.-Mexico border, reducing their size and increasing their already substantial Latino voter percentages; or create one new Latino-majority district by combining excess population from the existing districts with similar, neighboring counties. The District Court chose the first option, subtracting a net nine counties from the districts' territory and exacerbating the "packing" of Latino voters. In contrast, the plaintiffs' plan created an additional Latino majority district in the region, expanding the area of the now-seven districts.

The State urges this Court to affirm on the basis of compactness under the first *Gingles* precondition.[2] Yet, because the District Court failed to discuss any of plaintiffs' proposed districts, the State and Manley are unable to point to any particular district that the court found insufficiently compact. Furthermore, all of the court-drawn Latino-majority districts in South Texas were similar to or *less* compact than the same districts proposed by plaintiffs: District 15, linking San Patricio County to the U.S.-Mexico border; District 16 in El Paso; District 20 in San Antonio; District 23 in West Texas; District 27 along the Gulf Coast; and District 28, linking San Antonio to the border. Plaintiffs' proposed new congressional district, District 32, had compactness measures comparable to the court's Latino-majority districts.[3]

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[2] Appellants address the compactness arguments of both the State and Manley (Manley Motion) in this Reply.

[3] Compactness scores, produced by the Texas Legislative Council, for the trial court's plan 1151C, the plaintiffs' proposed plan 1123C, and the benchmark plan 1000C, are included in the Appendix (App.) at 16.

The State also does not dispute that the plaintiffs' proposed Latino-majority districts met the standard of compactness that the State set, and are more compact than ten congressional districts used in Texas throughout the 1990s. Nor does the State dispute that the plaintiffs' proposed districts are more compact than six remedial congressional districts created by the District Court in *Bush v. Vera*, 933 F.Supp. 1341 (S.D. Tex. 1996). Thus, the request that this Court summarily affirm, on compactness grounds, the rejection of proposed districts that are more compact than those the District Court itself drew – in this case and in *Vera* – simply defies logic.

Ignoring established compactness standards, the State argues that the districts' vertical shape alone justified a ruling that the Latino population is insufficiently compact to comprise the majority of seven districts in the region. Manley Motion at 18; Texas Motion at 4. This argument is unavailing in light of the traditional redistricting practices of the State, expressed since the 1980's, to create north-south Latino-majority districts in South Texas. Outside the urban counties of Bexar and El Paso, the Texas Legislature has traditionally created north-south Latino-majority districts in the region, ranging in length from over 150 miles to 550 miles.[4] The District

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[4] The *Vera* District Court found that the north-south configuration of congressional districts in South Texas was a traditional, non-race based redistricting practice:

> The location of District 28 in the northern portion of South Texas was determined in part by the historical north-south configuration of Congressional Districts 15 and 27. This was the result of attempts to remedy a . . . Section 5 objection which expressed concern that the original east-west configuration of Districts 15 and 27 resulted in packing of the Hispanic population. . . . [District 28's] progression south from Bexar County [to the Mexican border] is similar to the

Court followed that tradition in creating similarly long districts in its congressional plan. Aside from this misplaced critique of vertical districts, the State points to nothing in the record suggesting that the plaintiffs' proposed districts are non-compact.

II. THE DISTRICT COURT DID NOT RELY AND COULD NOT HAVE RELIED ON *SHAW* CONCERNS

The State ascribes to the District Court an entirely undiscussed analysis and conclusion that plaintiffs' proposed districts impermissibly subordinated compactness to racial considerations in contravention of *Shaw v. Reno*. The District Court undertook no such analysis and reached no such conclusion; thus, the State's imputation cannot form the basis for a summary affirmance.

The holdings of *Shaw*, *Hunt v. Cromartie*, 532 U.S. 234 (2001), *Bush v. Vera*, 517 U.S. 952 (1996), and *Miller v. Johnson*, 515 U.S. 900 (1995), do not require a higher compactness standard for majority minority districts than is employed in the remainder of the statewide plan. To the contrary, *Vera*, 517 U.S. at 977-978, instructs that where a district is drawn to remedy a section 2 violation, it may depart from traditional redistricting criteria, such as compactness, in a manner that non-remedial districts may not. If the uncommonly high standard of compactness urged by the State – more compact than districts in the rest of the state – operated to block section 2 plaintiffs at the *Gingles* precondition stage of the proceedings, then *Vera's* permission to depart from traditional redistricting criteria at the remedy phase would be a nullity. Similarly,

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configuration of the other Congressional districts in South Texas.

Vera v. Richards, 861 F.Supp. 1304, 1316 (S.D.Tex. 1994), *aff'd*, 517 U.S. 952 (1996).

Manley's argument that districts drawn to meet the first *Gingles* precondition "majority" requirement violate the Fourteenth Amendment would doom all illustrative *Gingles* districts as racial gerrymanders from the very outset. Manley Motion at 18.

Moreover, the discussion of compactness in the cases that the State cites underscore the need for review by this Court. Plaintiffs' proposed districts use county building blocks as units of construction; the districts encompass whole communities and do not separate people on the basis of race; the districts follow the boundaries of whole precincts; the districts lie adjacent to each other in one region of the state; and the districts encompass communities that share similar socio-economic characteristics as well as strong historical and familial ties.[5]

The fact that Latino population becomes less concentrated away from the border, or that a proposed district includes some Anglo persons, does not defeat a section 2 claim on non-compactness grounds, as the State argues. And the State fails to explain how concerns about the segregative effects of "reach[ing] out to grab small and apparently isolated minority communities," *Vera*, 517 U.S. at 978, is relevant here when the newly-included county building blocks contain an average 34 percent Latino population and experienced significant Latino population

---

[5] Manley's reliance on the testimony of Dr. Ronald Weber to suggest race-based considerations in Guadalupe and Comal Counties (among the 70 counties comprising plaintiffs' proposed districts) is unavailing. The *Vera* District Court considered and rejected the same testimony by Dr. Weber and upheld the district he challenged despite the fact that "[i]ts fingers do jut into the small cities of Seguin and New Braunfels [and] in so doing . . . the district excises the minority, largely Hispanic populations from those cities[.]" *Vera*, 861 F.Supp. at 1344; see also App. 11.

growth over the last decade.[6] Despite complaining *now* that counties added by plaintiffs to Latino majority districts contain "non-Latino population from unrelated communities" (State Motion at 4), the State at trial acknowledged the substantial Latino population of the exact same counties and encompassed them in a 39 percent Latino "influence" district.[7] App. 12.

Nothing in the District Court decision even hints that it considered *Shaw* and its progeny in relation to plaintiffs' proposed Latino majority districts.[8] Rather, in rejecting plaintiffs' districts as insufficiently compact, the court

---

[6] Dr. Andres Tijerina offered unique testimony in the litigation regarding community characteristics in plaintiffs' proposed districts. Dr. Tijerina testified that the residents of the counties encompassed by proposed congressional Districts 15 and 32 have been connected for the past 150 years by family ties, shared settlement patterns, and trade and labor. App. 4. Plaintiffs also offered the only socioeconomic evidence on proposed districts 15 and 32, and this evidence demonstrated that the residents were united by similar characteristics. This evidence remained before the lower court with respect to plaintiffs' corresponding proposed Senate districts.

[7] The State's proposed Latino "influence" district was comprised in large part of the same counties that comprise the upper portion of plaintiffs' Latino-majority Congressional District 32: Wilson, Gonzales, Guadalupe, Caldwell and Bastrop.

[8] The State's attempt to piggyback a Fourteenth Amendment analysis onto the District Court's reference to "compact" leaves wholly unexplained the District Court's failure to identify the necessary elements, beyond non-compactness, required to conclude that any of plaintiffs' proposed districts should be subjected to strict scrutiny, and the District Court's further failure to apply strict scrutiny to determine whether plaintiffs' proposed districts would "subordinate traditional redistricting principles to race substantially more than is 'reasonably necessary' to avoid § 2 liability." *Bush v. Vera*, 517 U.S. at 962 and 979.

applied the wrong legal standard – a higher standard than it applied to itself.

III. PLAINTIFFS' PROPOSED SENATE DISTRICTS PARALLEL TEXAS STATE PRACTICES

The State does not claim that plaintiffs' proposed redistricting plans are unconstitutionally malapportioned. Plaintiffs' congressional redistricting plan contained a total deviation of zero percent. Their proposed Senate redistricting plan contained a total deviation of 9.46 percent, presumptively constitutional and lower than the 9.71 percent total deviation in the court-affirmed LRB plan.

Instead, the State again imputes to the District Court an analysis and conclusion that appear nowhere in its decision: that majority Latino districts containing less than the ideal district population fail to satisfy the first *Gingles* precondition and contravene this Court's holding in *Shaw v. Reno*.

The Court's decision in *Holder v. Hall*, upon which the State relies, was not a redistricting case, but dealt with the question of expanding the size of a governing authority in response to a section 2 challenge. *Holder v. Hall*, 512 U.S. 874 (1994). This Court ruled that section 2 requires a vote dilution plaintiff to propose a "reasonable alternative practice as a benchmark against which to measure the existing voting practice." *Id.* at 880. Here, plaintiffs do not seek to change the *method* by which representatives are elected and thus *Holder*'s discussion of "reasonable alternative practice" is inapposite. Nevertheless, if the ruling in *Holder* were to extend to this case, the redistricting practices of the State would be the reasonable benchmark against which to measure plaintiffs' proposed Latino majority districts.

Because the State has chosen to systematically underpopulate its Latino majority districts in South Texas,

plaintiffs' proffered "reasonable alternative practice" of seven Latino majority districts in South Texas with *smaller* population deviations than those enacted by the State more than satisfies the *Holder* rule. The LRB redistricting plan, upheld by the District Court, purposefully underpopulates all but one of its seven Latino majority districts: District 6 (-4.87), District 19 (-4.87), District 20 (+.62), District 21 (-4.92), District 26 (-4.88), District 27 (-4.72), District 29 (-4.73). By contrast, the Latino majority Senate districts plaintiffs presented in Plan 1206S are far less underpopulated: District 6 (+3.28), District 18 (-1.55), District 19 (-1.12), District 20 (-2.2), District 21 (-3.33), District 26 (-2.43), District 27 (-4.13), District 29 (-4.62). J.S. App. 46; App. 21.

Finally, the State argues that underpopulated Latino-majority Senate districts alone offer conclusive proof of race-based redistricting in violation of *Shaw v. Reno*. The argument is legally unfounded and could not have formed the basis of the District Court's decision. It is also inconceivable that lawyers who counseled the State as it systematically underpopulated Latino-majority Senate districts would now seriously argue that that very practice violates the Constitution.

IV. THE STATE'S MOTION FURTHER PROVES THE INADEQUACY OF THE DISTRICT COURT'S FINDINGS

The State concedes that the basis for the court's ruling must be clear, even in the absence of factual findings, and that "a full understanding of the issues [must] be reached" before this Court can consider the issues on appeal. Motion at 11-12. The District Court's decision simply does not provide that basis for appellate review.

The ultimate evidence of the District Court's failure to articulate its reasoning and provide factual analysis in support of its decision is the State's Motion itself. In its

Motion, the State attributes to the trial court analyses and conclusions never even intimated in its decision. Any ruling so vulnerable to revisionism and misappropriation demonstrates failure under Rule 52.

Respectfully submitted,

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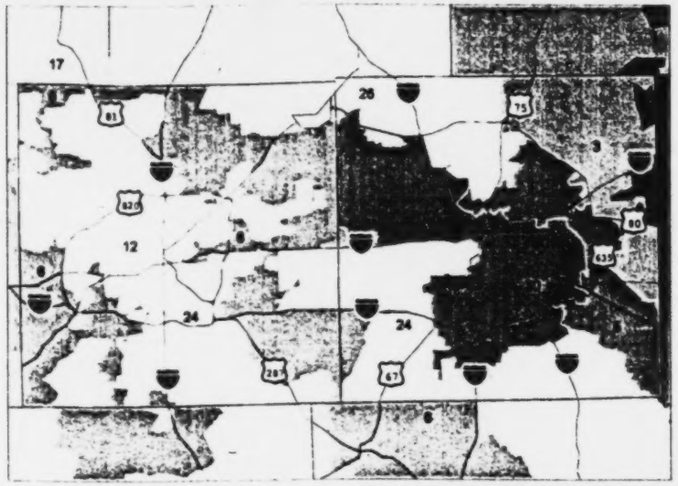
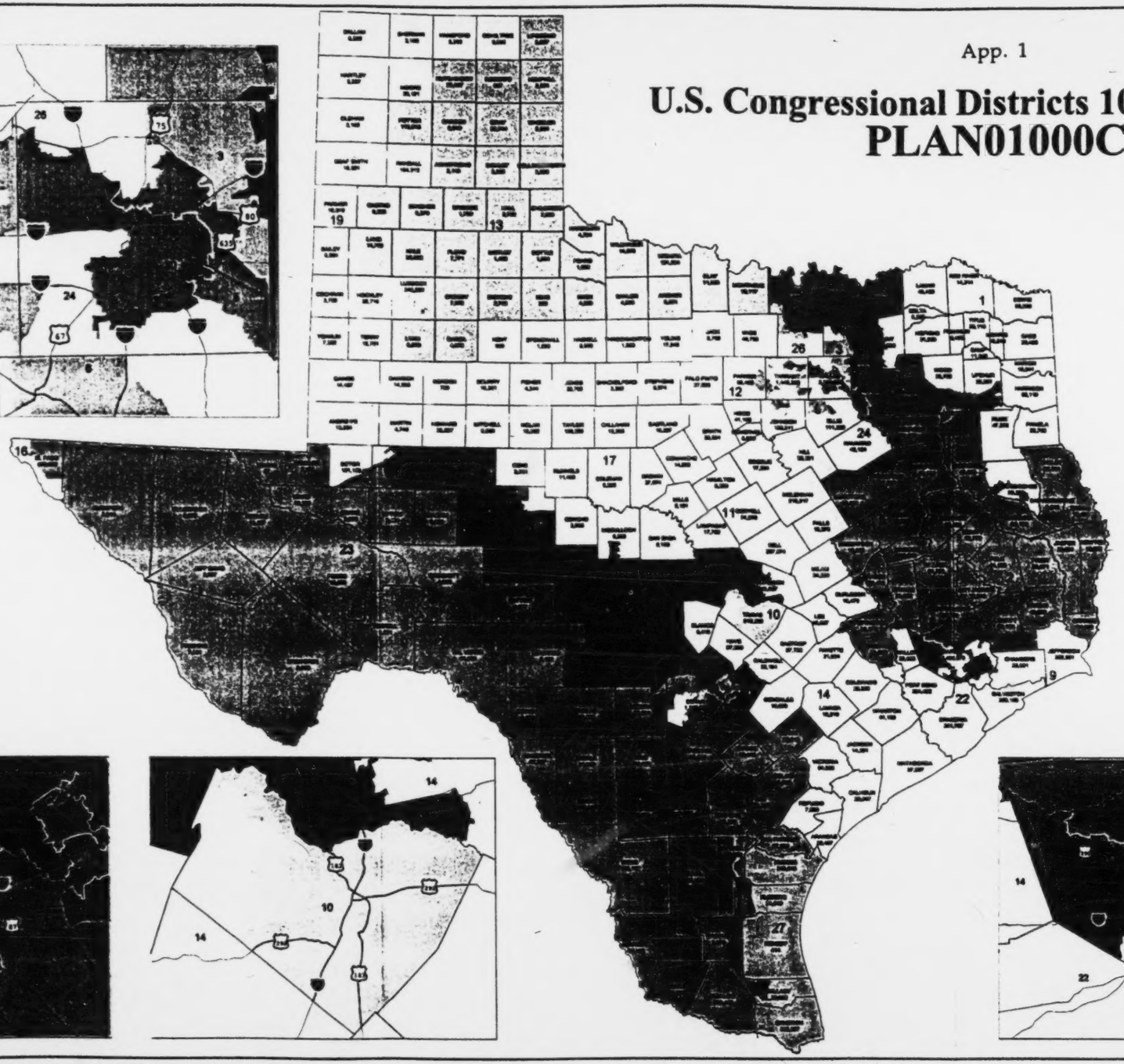
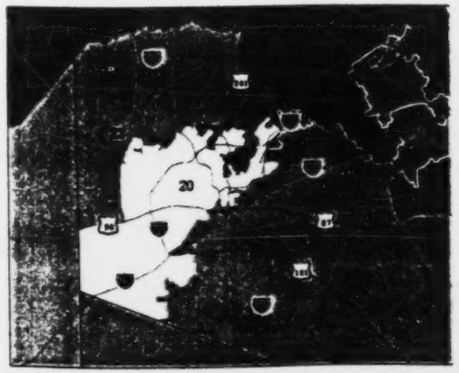
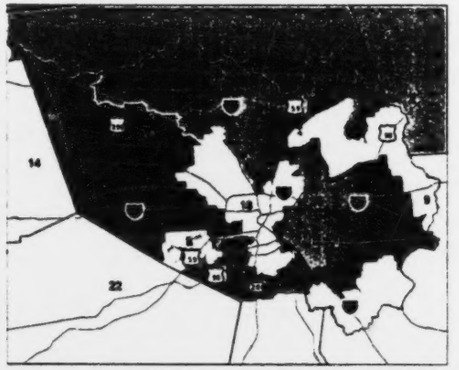
App. 1

U.S. Congressional Districts 107th Congress
PLAN01000C









Texas Legislative Council, 3/26/2002, Source: 2000 Census

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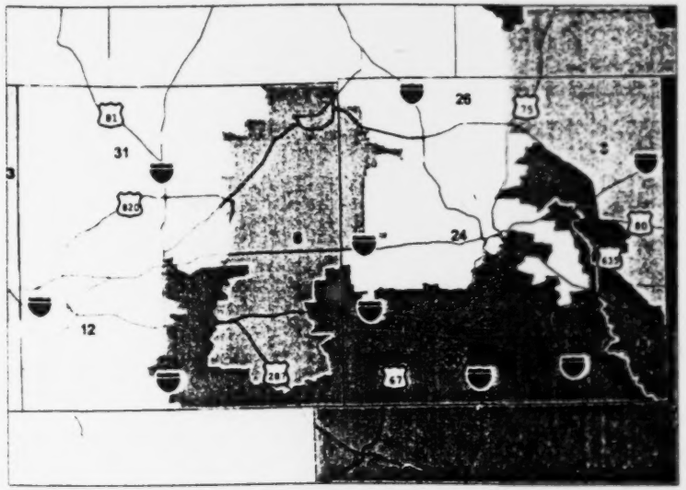
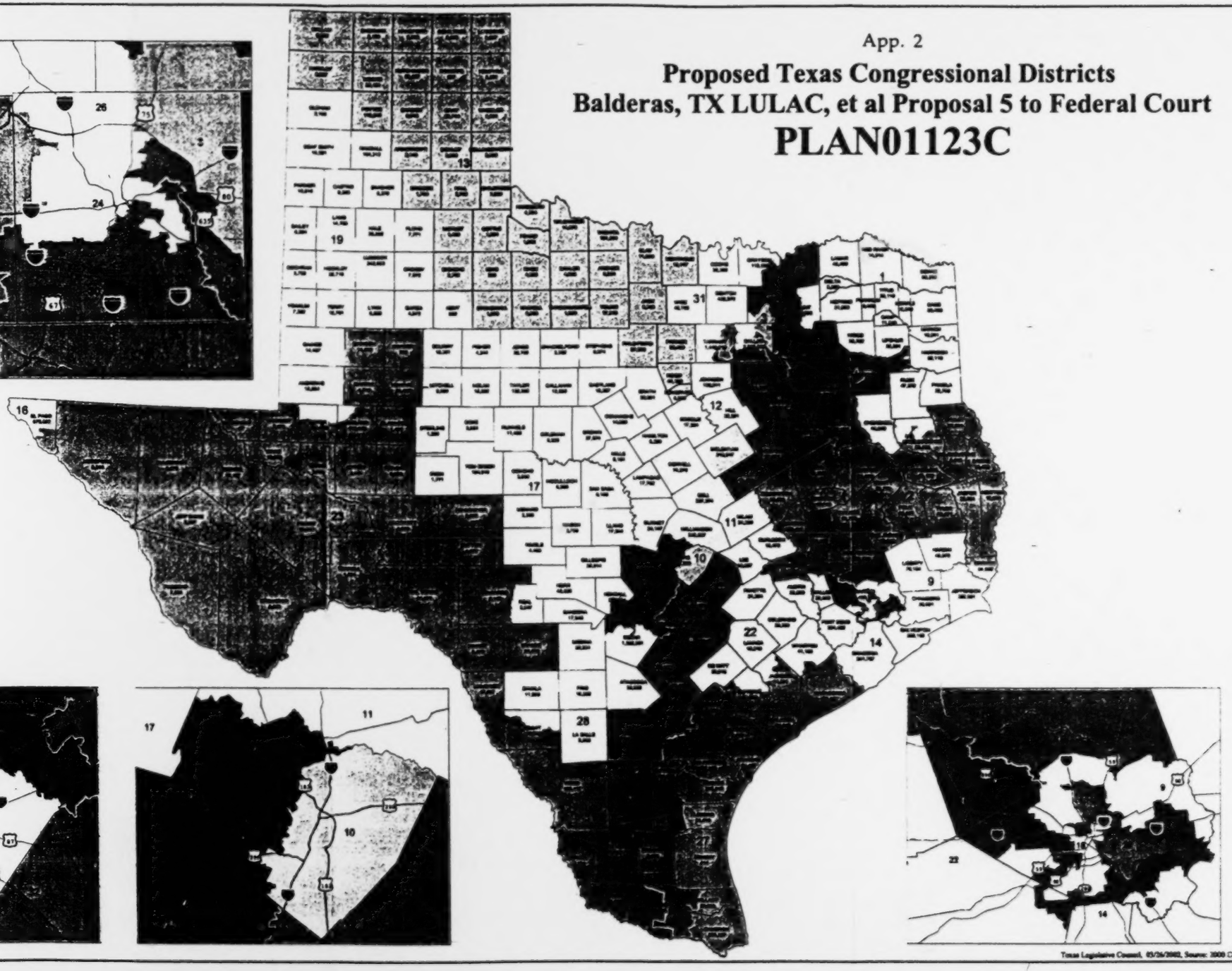
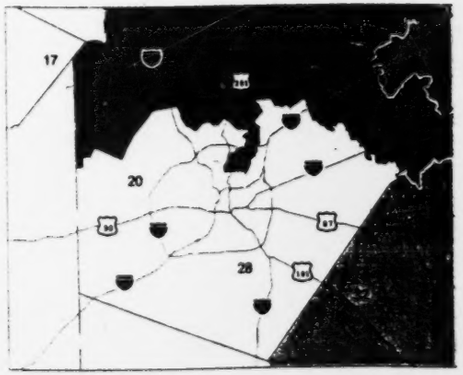
App. 2

Proposed Texas Congressional Districts
Balderas, TX LULAC, et al Proposal 5 to Federal Court
PLAN01123C





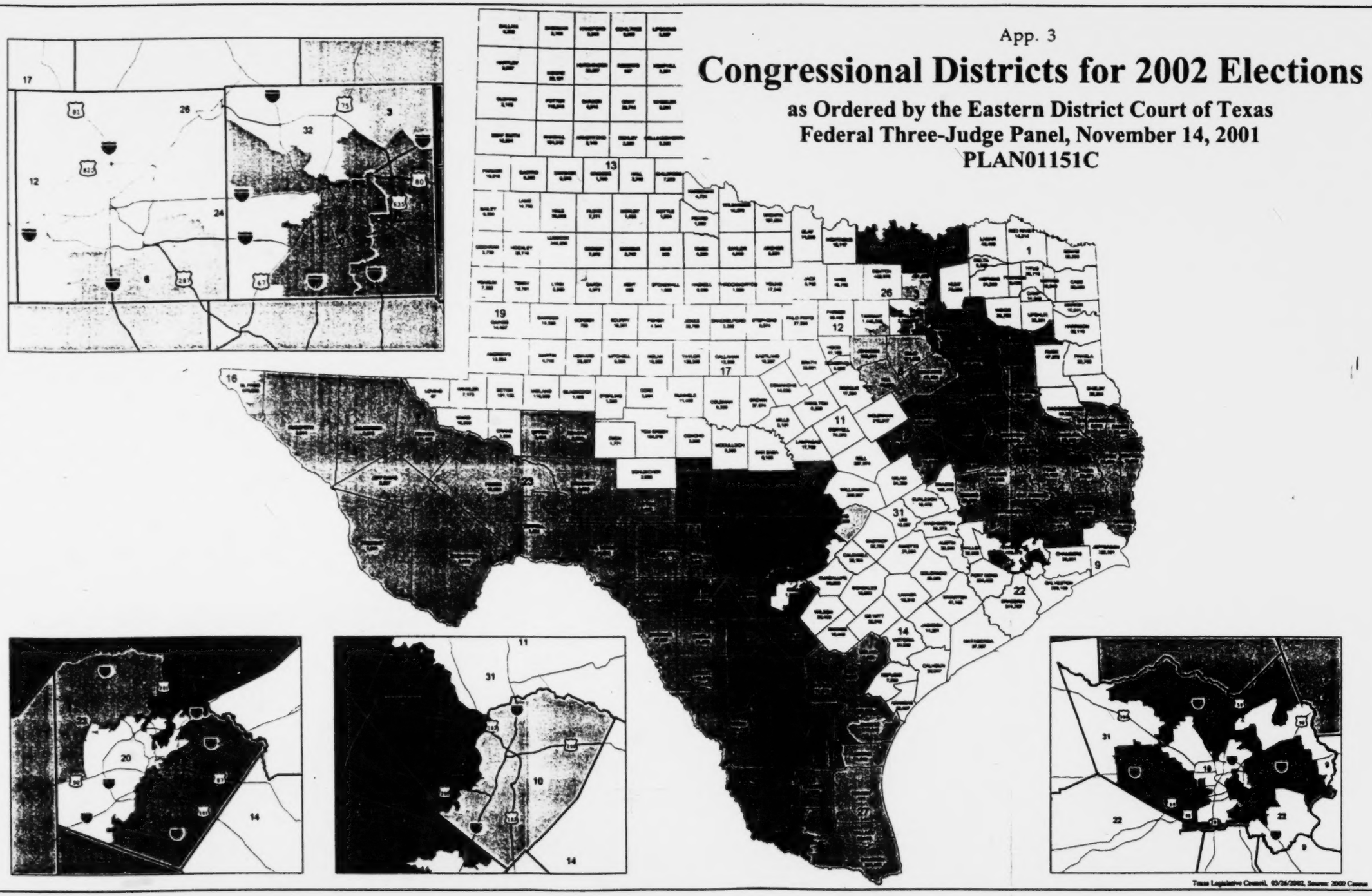


Texas Legislative Council, 05/26/2002, Source: 2000 Census

App. 3

Congressional Districts for 2002 Elections

as Ordered by the Eastern District Court of Texas
Federal Three-Judge Panel, November 14, 2001
PLAN01151C



Texas Legislative Council, 03/26/2002, Source: 2000 Census

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIMON BALDERAS, ET AL	*	CIVIL ACTION NO.
VS.	*	6:01-CV-158
STATE OF TEXAS, ET AL	*	Austin, Texas

(This Filing Applies to all Actions)

TRANSCRIPT OF BENCH TRIAL
BEFORE
THE HONORABLE PATRICK E. HIGGINBOTHAM,
THE HONORABLE JOHN HANNAH, JR.
AND
THE HONORABLE T. JOHN WARD

* * *

October 22, 2001, Afternoon Session

[Testimony of Dr. Andres Tijerina]

* * *

[135] Q. Dr. Tijerina, I also asked you have you had a chance to consider in terms of some of the districting plans before the Court, the relationship between geographic areas in Texas in terms of their history, have you had a chance to review that, sir?

A. I've looked at that map, yes, sir.

Q. I would like you for a moment to tell me if you have in your opinion and based on your research, if you have found any relationships between the areas of Cameron, Hidalgo, Starr, Zapata County up through the Nueces River area, Aransas, San Patricio, Bee, Karnes, Live Oak Counties, and then indeed up through the area

along the Guadalupe and San Antonio rivers, Matagorda, [136] Calhoun, Victoria, up through Gonzales, Guadalupe Counties, have you had a chance to consider based upon the research and the writings as reflected in your report any of this history, sir?

A. Yes, sir.

Q. Will you give us a brief description of it, relationship between the groups of counties and the areas that I mentioned, the Rio Grande River up through the Nueces River area up through the San Antonio and Guadalupe River areas in terms of this study of Mexicans in Texas history that you have made?

A. In my research and publications and reading the literature in history in Texas history books, and our archives, I've found a strong and direct link that is well-documented between the community and along the Rio Grande, the lower Rio Grande, stretching up to along the coast all the way up to the San Antonio and Guadalupe River, and a couple – in two separate ways that I can cite in the 19th Century very strong relationship in the family patterns as well as in the trade patterns.

Q. Dr. Tijerina, let me ask you to come down here with us if you can, and I would like you to explain this history to the Court relating it to Plan 1099C and specifically with regard to proposed Districts 27, 15 and 32.

[137] If you will come over on this side, I will give you this, and don't be too professorial with us, though, but please explain it to us.

A. That's asking a lot.

JUDGE HIGGINBOTHAM: That's the way lawyers do. They get to be lawyer-like, but you can't be professor-like?

A. I can't do it.

Q. (By Mr. Kauffman) Let me ask you to explain first the historical relationship of families from along the Rio Grande river up through the Nueces River area and then up through the areas up to Victoria, sir?

A. The first families ever to lay claim on the land in this area, the original land grantees, were settled in five villages along the Rio Grande, from Laredo down to present day Brownsville by a wealthy Spanish count named Escondon in the 1750s.

Each of those villages that he established was a municipality and he gave land grants to all of the residents of those municipalities in a strip of land stretching northward from each one of them, so that the residents and the settlers of Reynosa were given their land grants headed northward toward the Corpus Christi area, all the way up to the Nueces.

The residents of Camargo were given their [138] land grants and you can follow their family geneology trees and the registration of their land grants straight from the Nueces River all the way down a strip to the Rio Grande.

JUDGE HIGGINBOTHAM: How do you fit the Conquistador period and Stephen Austin when he had the Mexican-Nationals and those men? How do you fit that pattern?

THE WITNESS: Very similar, sir. Stephen F. Austin received his land grants right here in Sealy, Texas

and San Felipe, Texas on the Colorado and the Brazos, actually the Brazos, and his people, his original 300 Anglo-American families that came in are all grouped right around him.

Now, the difference was that his were in pretty much a circle, where as these were in long strips.

THE WITNESS: When you say these were in long strips, you mean these families from along the Rio Grande River, for instance Starr County, were in strips up towards Gonzales, Caldwell and Bastrop.

JUDGE HIGGINBOTHAM: I thought he had a strip up through the Colorado and Brazos, northward, I didn't remember?

As a specific example, the village of Camargo on the Rio Grande would give land grants to its [139] settlers as they move northward, and I will follow one family for you, the Benevides family.

JUDGE HIGGINBOTHAM: That's a good name with my Court.

THE WITNESS: The Benevides family from Camargo, went and settled in Duval County, Benevides, Texas.

Straight south or rather northeast from there then there is a little town called Placedo, Texas, that is Placedo Benevides. That's the same family, direct linkage to the Duval County and straight on down to Camargo.

Those are all of the same families from the Rio Grande up to the Nueces River curving over toward Refugio, Victoria, Goliad area, and they were actually

relatives sometimes of the first and second degree of consanguinity of each other, cousins.

In villages on the Rio Grande, direct brothers or cousins of the people in Goliad and Victoria. They had their land grants, they had their ranches, and their families all along these lines. That's what I mean by the families.

* * *

[141] Q. (By Mr. Kauffman) Dr. Tijerina, if we can move on to the 20th Century, I think you talked about a pattern of migration, where was the migration from, and [142] to where did these people migrate after the Mexican Revolution, sir?

A. Well, to give a quick background those people who poured in and inundated not only the original Tejanos that we are talking about, but they inundated the Anglo-Americans all along this blackland prairie which is this curved strip, so that somewhere between 50 to 90 percent of the population was Mexican.

Now, those people are the ones that then were displaced by the New Deal Program in the 1930s. They had been sharecroppers all along this area picking the cotton in the 1880s to 1930 period, and they were – it was Mexican, a large population of Mexican Nationals.

Q. I think you mentioned, but what percentage of the population of Caldwell County is Mexican-American in the early 1990s?

A. In 1930 Caldwell County was about 90 percent Mexican National. Karnes County was 82 percent Mexican National in the period leading up to 1930.

JUDGE HANNAH: What was Bexar in 1910, 1900?

THE WITNESS: Bexar County in 1900 probably would have been just below 50 percent Mexican.

Now, Mexican National is what I was talking about. I was saying that Caldwell County was born in [143] Mexico, 1930 about 90 percent. So Bexar County born in Mexico probably 25 percent, born in the United States but Hispanic probably another 25 percent, 20 percent something like that.

Q. (By Mr. Kauffman) Dr. Tijerina, after 1933 you said because of a Federal Act there was basically a lot of the share croppers were removed from the land and became migrants, what about the migrant stream?

A. The migrant stream then took place between 1930 and 1960 started in the – along the Rio Grande, cotton areas, irrigated cotton in about June or July with about 100,000 cotton pickers, Mexican Nationals and Mexican-Americans.

By the end of July and August, those people had picked the cotton and moved up to the Corpus Christi, Taft, Robstown area and where they picked the cotton there and were joined by another maybe 50 to 100 thousand.

They then would move in trucks, buses, and cars and any other way up to the Goliad Victoria area where they picked the cotton around September, and they would move on up to the Brazos bottoms or Brazos River bottoms around the Bryan/College Station area by about

September or October so that the migrant stream followed perfectly along this coastal, following literally the [144] season, starting in June or July and then moving up to about August, September or October up in the Bryan/College Station area.

It's well-documented in newspapers and USDA accounts and State accounts.

Q. Dr. Tijerina, based on the analysis of 150 years of history, have you come to any conclusions about whether they are historical relationships between these areas along the lower Rio Grande River, through the Nueces River, and Nueces County up through Karnes and Wilson area up through the Victoria, Jackson County Gonzales and the Caldwell County area, have you come to and conclusions regarding that, sir?

A. Yes, that the original families are still linked. You can still find either Benevides or Tijerina or Cavasos family, Navarro, Gutierrez, the original families. You can find them in the Victoria area with relatives along the Rio Grande.

As far as that larger wave that came in after the turn of the century, those people also – my conclusion is those people also have strong family ties all along that migrant stream because as it went northward, they started dropping out and settling along the migrant stream. So, there is that nexus, the family ties also.

[145] Q. There is then historically a pattern of relationships between these counties along the Rio Grand River specifically, Cameron, Hidalgo, Starr and Zapata, up through the counties along the Nueces River, Nueces,

San Patricio, Bee, up through the San Antonio and Guadalupe River areas; is that correct, sir?

A. That is correct.

* * *

November 1, 2001, Afternoon Session

[Testimony of Dr. Ronald Weber]

* * *

[29] Q. Let me ask you this while we are finding it, Dr. Weber, you certainly have not studied and are not an expert regarding the Texas geography in the area between San Antonio and Austin; is that correct?

A. Between San Antonio and Austin? I guess I am more knowledgeable about Harris County and I'm more knowledgeable about the Metroplex than I would be about those areas.

[30] Q. But you are certainly not aware of any natural barriers in terms of Balcones Fault, highways, divisions in the area of San Antonio/Austin than would anyone else who drove around the State of Texas; is that correct?

A. I know where Interstate 35 is.

Q. Outside knowing where Interstate 34 is, you are not going to offer us any expert opinions on natural barriers, on the geographic barriers, highways, and their

barriers to the community between Austin and San Antonio; is that correct?

A. That is correct, sir, yes.

* * *

November 1, 2001, Afternoon Session

[Testimony of Dr. John Alford]

* * *

[115] EXAMINATION

BY MS. PERALES:

[116] Q. Based on your regression analysis that you did for this case, you can certainly conclude that at the level of the general election, you've got racially polarized voting?

A. Yes.

Q. You concluded that there is cohesive voting among Latino voters, correct?

A. Yes.

Q. In the Democratic primary that you analyzed for your report, Anglos vote overwhelmingly against the Hispanic candidate of choice, correct?

A. As sort of a general – yes, absolutely.

Q. I just wanted to follow up on one thing.

MS. PERALES: If I could ask Mr. Ware to zoom in on the map that you are supporting in the area around

Guadalupe and Caldwell Counties, which I believe is District 31 in the map.

Q. (By Ms. Perales) I believe you observed either in your testimony or in your testimony in the state court case that there is a considerable Latino population in this I-35 corridor area, is there not?

A. That is correct.

Q. And Plan 1044 gathers these voters into District 10, correct – I'm sorry, District 31?

A. Yeah, that population basically is not split [117] by a district. It sort of keeps that population together.

Q. However, the district is about 39 percent Hispanic voting age population, about 26 percent Spanish surnamed registration, correct?

A. I will take your word for it rather than waste time looking it up. It sounds about right.

Q. Thank you.

MS. PERALES: Mr. Ware, if you can put up Plan 1123 and focus on the same area.

Q. (By Ms. Perales) Isn't it true, Dr. Alford, that in Plans 1123 as well as 1121 and 1099 that this considerable Latino population is placed into a district with a majority of Spanish surnamed voter registration? That is one of our seven districts in South Texas.

A. You are excluding then the Travis County portion of the population?

Q. Yes, we don't cut into Travis County.

A. Yes. The portion outside of Travis County in your district is joined, too. I presume – does it go down to Hidalgo?

Q. Yes.

A. Yes, it's joined in Hidalgo.

Q. But it is encapsulated within a district that [118] is majority Spanish surnamed voter registration, right?

A. Yes.

Q. Can you outline for me, please, the boundary of District 31 in Plan – I just want to know if you can observe that this boundary here along the Balcones Fault along the cities of New Braunfels, San Marcos, Seguin, this area here, is substantially similar to the boundary that is followed in Plans 1123, 1099, 1121. Are you familiar with the way that we do that boundary compared to that one?

A. It's similar to the map we just looked at, again, with the Travis County exception, the 35 lines.

Q. You are familiar with those towns actually being arranged like pearls on a string along I-35 in that corridor?

A. A nice description.

Q. Thank you.

A. The Chamber of Commerce would appreciate that.

Q. I will apply to them. You concluded that in Plan 1044 that the creation of eight Hispanic voting age population districts falls between – in terms of proportionality 28.6 and 19.5 percent; is that correct?

A. That's from my report, yes.

Q. You would also agree with me that Plan 1123 and its sister plans which create nine Hispanic voting [119] age majority districts also falls between, in terms of proportionality, that 28.6 and 19.5 percent?

A. Again, that is correct. Yes.

Q. I just wanted to ask you, I'm not sure if you covered this with Mr. Taylor. In your opinion, compactness is a factor that Texas has not historically valued, right?

A. I don't think anyone can look at 1000C – if a principle is something that you apply, not just something that you use when it suits your interests, if you can find a principle of compactness across that map, it's a new one to me.

* * *

RED-M315
Data: 2000 Census
PLAN 01000C 02/09/01 15:43:47

COMPACTNESS ANALYSIS
CONGRESSIONAL - PLAN 01000C
Area Based Measures

Texas Legislative Council
07/18/01 10:15 AM
Page 1 of 1

DISTRICT	COMPACTNESS MEASURES	
	Perimeter to Area [1] (Rank)	Smallest Circle [2] (Rank)
Plan Average:	**8.2**	**3.3**
1	7.3 (17)	2.7 (12)
2	8.6 (21)	1.8 (1)
3	5.5 (10)	3.1 (18)
4	10.6 (25)	4.0 (23)
5	8.5 (20)	3.1 (19)
6	37.5 (30)	4.8 (27)
7	4.0 (4)	3.4 (21)
8	11.4 (28)	3.0 (17)
9	5.2 (8)	2.5 (7)
10	3.2 (2)	2.3 (2)
11	3.2 (3)	2.4 (4)
12	16.9 (29)	2.6 (11)
13	5.4 (9)	2.8 (13)
14	9.8 (24)	2.6 (10)
15	7.9 (18)	5.1 (30)
16	4.7 (6)	5.1 (29)
17	2.6 (1)	2.4 (3)
18	6.6 (16)	2.9 (14)
19	6.2 (14)	5.0 (28)
20	8.1 (19)	3.0 (16)
21	11.0 (27)	4.5 (26)
22	9.5 (22)	2.4 (6)
23	5.8 (13)	4.2 (24)
24	9.7 (23)	2.9 (15)
25	10.6 (26)	4.4 (25)
26	4.7 (7)	2.4 (5)
27	4.6 (5)	3.2 (20)
28	6.2 (15)	3.8 (22)
29	5.6 (11)	2.6 (8)
30	5.6 (12)	2.6 (9)

Compactness measures: Each measure is reported on a scale of 1 or greater, with lower numbers being more compact. On each scale, a score of 1 indicates perfect compactness. There is no upper limit to the score under any of the measures on this report.

Rank: Rank indicates the relative compactness of each district compared to the other districts in the plan, with 1 being the district with the most compact score for the specific compactness measure.

1 "Perimeter to Area" is the ratio of the area of a circle with the same perimeter as the district to the area of the district.
2 "Smallest Circle" is the ratio of the area of the smallest circle enclosing the district to the area of the district.

Request:8740

App. 16

COMPACTNESS ANALYSIS
CONGRESSIONAL - PLAN 01123C
Area Based Measures

DISTRICT	COMPACTNESS MEASURES	
	Perimeter to Area [1] (Rank)	Smallest Circle [2] (Rank)
Plan Average:	**5.4**	**2.9**
1	6.5 (23)	2.0 (7)
2	6.5 (24)	2.3 (10)
3	3.5 (8)	3.4 (25)
4	8.1 (28)	2.9 (17)
5	4.7 (15)	2.5 (13)
6	4.3 (14)	2.2 (9)
7	3.4 (7)	3.4 (24)
8	5.9 (21)	3.0 (18)
9	3.8 (11)	1.8 (3)
10	2.3 (2)	1.8 (2)
11	4.8 (17)	2.5 (14)
12	3.6 (9)	3.1 (19)
13	3.8 (12)	3.8 (26)
14	4.7 (16)	3.1 (20)
15	8.3 (29)	4.7 (31)
16	2.1 (1)	2.0 (5)
17	2.5 (3)	1.6 (1)
18	10.4 (31)	3.9 (28)
19	2.8 (5)	2.4 (11)
20	2.6 (4)	2.5 (12)
21	6.0 (22)	2.6 (15)
22	5.4 (19)	3.1 (21)
23	5.6 (20)	3.8 (27)
24	7.3 (26)	2.8 (16)
25	13.0 (32)	3.9 (29)
26	3.7 (10)	2.0 (6)
27	4.8 (18)	3.2 (23)
28	3.3 (6)	1.9 (4)
29	7.7 (27)	3.1 (22)
30	10.0 (30)	4.2 (30)

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Request:14634

COMPACTNESS ANALYSIS
CONGRESSIONAL - PLAN 01123C
Area Based Measures

DISTRICT	COMPACTNESS MEASURES	
	Perimeter to Area [1] (Rank)	Smallest Circle [2] (Rank)
31	3.9 (13)	2.2 (8)
32	7.0 (25)	5.6 (32)

App. 18

Compactness measures: Each measure is reported on a scale of 1 or greater, with lower numbers being more compact. On each scale, a score of 1 indicates perfect compactness. There is no upper limit to the score under any of the measures on this report.

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COMPACTNESS ANALYSIS
CONGRESSIONAL - PLAN 01151C
Area Based Measures

DISTRICT	COMPACTNESS MEASURES	
	Perimeter to Area [1] (Rank)	Smallest Circle [2] (Rank)
Plan Average:	**5.1**	**2.8**
1	5.3 (19)	2.3 (13)
2	5.9 (21)	1.9 (7)
3	3.5 (10)	1.7 (1)
4	8.9 (31)	4.9 (31)
5	6.3 (24)	2.5 (16)
6	2.8 (7)	1.9 (6)
7	2.7 (3)	1.9 (5)
8	3.7 (12)	2.9 (21)
9	4.7 (17)	2.5 (15)
10	2.1 (2)	1.9 (4)
11	3.5 (11)	2.1 (11)
12	1.9 (1)	2.0 (8)
13	2.7 (4)	2.9 (20)
14	4.6 (16)	2.0 (10)
15	8.5 (29)	5.0 (32)
16	3.8 (13)	2.9 (22)
17	2.7 (5)	2.0 (9)
18	8.5 (30)	2.8 (19)
19	4.3 (15)	2.9 (23)
20	7.1 (26)	2.9 (24)
21	3.2 (9)	1.8 (3)
22	7.1 (27)	2.4 (14)
23	6.1 (22)	4.2 (29)
24	6.1 (23)	3.1 (26)
25	11.8 (32)	4.4 (30)
26	2.7 (6)	1.8 (2)
27	4.1 (14)	3.1 (25)
28	5.4 (20)	3.7 (27)
29	7.7 (28)	2.8 (18)
30	4.7 (18)	2.7 (17)

Compactness measures: Each measure is reported on a scale of 1 or greater, with lower numbers being more compact. On each scale, a score of 1 indicates perfect compactness. There is no upper limit to the score under any of the measures on this report.

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2. "Smallest Circle" is the ratio of the area of the smallest circle enclosing the district to the area of the district.

App. 19

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COMPACTNESS ANALYSIS
CONGRESSIONAL - PLAN 01151C
Area Based Measures

DISTRICT	COMPACTNESS MEASURES	
	Perimeter to Area [1] (Rank)	Smallest Circle [2] (Rank)
31	6.7 (25)	3.8 (28)
32	3.0 (8)	2.3 (12)

App. 20

Compactness measures: Each measure is reported on a scale of 1 or greater, with lower numbers being more compact. On each scale, a score of 1 indicates perfect compactness. There is no upper limit to the score under any of the measures on this report.

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RED-M200
Data: 2000 Census
PLAN 01188S 07/24/01 19:29:33

POPULATION AND GENERAL ELECTION HISTORY
SENATE DISTRICTS - PLAN 01188S

PLAN 01188S DIST		2000 CENSUS: TOTAL POPULATION: DEVIATION		TOTAL	ANGLO	BLACK	HISP	B+H	OTHER	% POPULATION: %A	%B	%H	%B+H	%O	GENERAL ELECTION HISTORY*: -YEAR-	--VOTER REG--: TOTAL	%SPAN	---TURNOUT---: TOTAL	TO/VR	STATEWIDES**: %DEM	%REP
1	Total	+ 3,040	(+0.45%)	675,679	501,017	118,077	46,846	164,054	10,608	74.2	17.5	6.9	24.3	1.6	2000	369,389	1.7	240,499	65.1%	35.6	64.4
	VAP			502,668	385,484	81,459	28,461	109,451	7,733	76.7	16.2	5.7	21.8	1.5	1998	362,137	1.4	154,881	42.8%	43.6	56.4
2	Total	+ 21,683	(+3.22%)	694,322	478,412	92,706	102,340	193,744	22,166	68.9	13.4	14.7	27.9	3.2	2000	335,339	5.8	210,628	62.8%	36.9	63.1
	VAP			490,177	354,413	59,541	61,434	120,362	15,402	72.3	12.1	12.5	24.6	3.1	1998	310,035	5.0	117,237	37.8%	39.8	60.2
3	Total	+ 28,645	(+4.26%)	701,284	531,252	91,116	69,369	159,575	10,457	75.8	13.0	9.9	22.8	1.5	2000	387,281	3.0	245,157	63.3%	35.9	64.1
	VAP			521,768	406,717	64,274	43,600	107,368	7,683	77.9	12.3	8.4	20.6	1.5	1998	367,905	2.7	148,428	40.3%	43.4	56.6
4	Total	-16,772	(-2.49%)	655,867	494,123	88,444	57,120	144,633	17,111	75.3	13.5	8.7	22.1	2.6	2000	364,365	4.3	243,952	67.0%	35.3	64.7
	VAP			471,848	363,114	60,669	36,724	96,850	11,884	77.0	12.9	7.8	20.5	2.5	1998	346,404	3.8	145,316	41.9%	41.7	58.3
5	Total	-7,425	(-1.10%)	665,214	458,549	82,081	104,862	185,566	21,099	68.9	12.3	15.8	27.9	3.2	2000	329,624	7.5	228,248	69.2%	34.2	65.8
	VAP			495,709	355,073	57,362	68,222	124,930	15,706	71.6	11.6	13.8	25.2	3.2	1998	297,185	6.9	140,793	47.4%	40.8	59.2
6	Total	-32,754	(-4.87%)	639,885	114,656	63,579	451,363	512,164	13,065	17.9	9.9	70.5	80.0	2.0	2000	217,271	46.3	110,459	50.8%	62.2	37.8
	VAP			429,481	95,202	42,027	283,928	324,450	9,829	22.2	9.8	66.1	75.5	2.3	1998	216,412	43.1	60,955	28.2%	62.0	38.0
7	Total	+ 22,471	(+3.34%)	695,110	486,961	47,730	113,173	159,455	48,694	70.1	6.9	16.3	22.9	7.0	2000	369,782	7.5	265,919	71.9%	23.9	76.1
	VAP			503,413	363,818	31,397	74,106	104,716	34,879	72.3	6.2	14.7	20.8	6.9	1998	329,907	6.6	140,281	42.5%	22.7	77.3
8	Total	+ 4,470	(+0.66%)	677,109	474,601	40,721	96,954	136,462	66,046	70.1	6.0	14.3	20.2	9.8	2000	338,761	5.1	242,322	71.5%	25.6	74.4
	VAP			499,748	360,346	27,739	64,598	91,738	47,664	72.1	5.6	12.9	18.4	9.5	1998	292,491	4.6	121,224	41.4%	24.0	76.0
9	Total	+ 10,730	(+1.60%)	683,369	379,083	84,504	166,628	248,971	55,315	55.5	12.4	24.4	36.4	8.1	2000	282,096	9.7	186,582	66.1%	34.5	65.5
	VAP			484,497	285,972	54,391	105,523	158,934	39,591	59.0	11.2	21.8	32.8	8.2	1998	257,354	8.5	89,674	34.8%	33.0	67.0
10	Total	+ 32,236	(+4.79%)	704,875	399,005	117,630	161,733	277,371	28,499	56.6	16.7	22.9	39.4	4.0	2000	341,943	9.4	241,019	70.5%	40.3	59.7
	VAP			504,808	306,396	78,342	100,682	178,034	20,378	60.7	15.5	19.9	35.3	4.0	1998	328,473	8.6	137,450	41.8%	41.9	58.1
11	Total	-2,264	(-0.34%)	670,375	438,871	64,375	134,957	197,768	33,736	65.5	9.6	20.1	29.5	5.0	2000	368,489	11.7	272,606	74.0%	35.8	64.2
	VAP			483,941	329,874	44,158	86,654	130,099	23,968	68.2	9.1	17.9	26.9	5.0	1998	341,892	11.0	130,234	38.1%	38.4	61.6

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Request:15128

POPULATION AND GENERAL ELECTION HISTORY
SENATE DISTRICTS - PLAN 01188S

PLAN 01188S DIST		2000 CENSUS: TOTAL POPULATION: DEVIATION		TOTAL	ANGLO	BLACK	HISP	B+H	OTHER	% POPULATION: %A	%B	%H	%B+H	%O	GENERAL ELECTION HISTORY*: -YEAR-	--VOTER REG-- TOTAL	%SPAN	---TURNOUT--- TOTAL	TO/VR	STATEWIDES** %DEM	%REP
12	Total	-5,286	(-0.79%)	667,353	509,070	39,950	86,478	125,379	32,904	76.3	6.0	13.0	18.8	4.9	2000	332,838	6.0	231,817	69.6%	30.4	69.6
	VAP			482,056	378,766	26,129	54,801	80,428	22,862	78.6	5.4	11.4	16.7	4.7	1998	306,359	5.4	117,959	38.5%	32.3	67.7
13	Total	-6,379	(-0.95%)	666,260	133,437	325,507	160,680	482,113	50,710	20.0	48.9	24.1	72.4	7.6	2000	320,209	8.2	202,458	63.2%	72.8	27.2
	VAP			483,895	115,962	226,786	103,901	328,346	39,587	24.0	46.9	21.5	67.9	8.2	1998	308,587	7.2	121,603	39.4%	73.4	26.6
14	Total	+27,217	(+4.05%)	699,856	380,654	75,121	203,673	275,844	43,358	54.4	10.7	29.1	39.4	6.2	2000	362,007	14.9	251,893	69.6%	47.7	52.3
	VAP			533,967	311,808	51,434	137,421	187,364	34,795	58.4	9.6	25.7	35.1	6.5	1998	315,486	14.5	146,549	46.5%	50.8	49.2
15	Total	-6,295	(-0.94%)	666,344	225,273	173,164	234,554	404,687	36,384	33.8	26.0	35.2	60.7	5.5	2000	277,011	14.8	169,174	61.1%	52.4	47.6
	VAP			468,078	179,993	114,117	148,584	261,209	26,876	38.5	24.4	31.7	55.8	5.7	1998	266,511	12.9	92,008	34.5%	51.3	48.7
16	Total	+3,125	(+0.46%)	675,764	360,899	85,529	186,648	270,317	44,548	53.4	12.7	27.6	40.0	6.6	2000	306,943	7.5	211,402	68.9%	36.1	63.9
	VAP			508,682	293,933	58,316	124,066	181,334	33,415	57.8	11.5	24.4	35.6	6.6	1998	293,275	6.5	127,837	43.6%	33.3	66.7
17	Total	+29,937	(+4.45%)	702,576	355,334	107,244	159,171	263,733	83,509	50.6	15.3	22.7	37.5	11.9	2000	334,623	10.2	236,070	70.5%	38.3	61.7
	VAP			503,583	268,652	71,691	104,483	174,683	60,248	53.3	14.2	20.7	34.7	12.0	1998	307,858	9.3	131,662	42.8%	39.9	60.1
18	Total	-11,597	(-1.72%)	661,042	386,786	73,311	182,102	253,452	20,804	58.5	11.1	27.5	38.3	3.1	2000	352,490	14.8	225,350	63.9%	35.4	64.6
	VAP			473,776	294,144	50,724	115,680	165,569	14,063	62.1	10.7	24.4	34.9	3.0	1998	326,470	13.8	146,145	44.8%	42.2	57.8
19	Total	-32,776	(-4.87%)	639,863	162,382	42,132	428,554	468,168	9,313	25.4	6.6	67.0	73.2	1.5	2000	312,440	55.2	159,220	51.0%	52.3	47.7
	VAP			438,510	128,891	29,868	274,140	302,848	6,771	29.4	6.8	62.5	69.1	1.5	1998	294,629	53.7	97,250	33.0%	56.3	43.7
20	Total	+4,140	(+0.62%)	676,779	163,775	17,231	486,661	502,002	11,002	24.2	2.5	71.9	74.2	1.6	2000	313,197	59.5	169,857	54.2%	52.2	47.8
	VAP			462,963	129,634	11,424	314,844	325,415	7,914	28.0	2.5	68.0	70.3	1.7	1998	299,983	58.1	99,551	33.2%	55.7	44.3
21	Total	-33,114	(-4.92%)	639,525	173,193	30,596	427,861	456,101	10,231	27.1	4.8	66.9	71.3	1.6	2000	329,403	57.9	167,288	50.8%	49.6	50.4
	VAP			435,429	133,030	21,190	275,036	295,052	7,347	30.6	4.9	63.2	67.8	1.7	1998	285,129	59.2	100,950	35.4%	55.5	44.5
22	Total	+15,161	(+2.25%)	687,800	490,752	80,169	103,948	182,394	14,654	71.4	11.7	15.1	26.5	2.1	2000	340,586	7.0	217,836	64.0%	35.3	64.7
	VAP			499,517	371,729	54,001	63,973	117,212	10,576	74.4	10.8	12.8	23.5	2.1	1998	316,045	6.4	129,240	40.9%	41.2	58.8

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POPULATION AND GENERAL ELECTION HISTORY
SENATE DISTRICTS - PLAN 01188S

PLAN 01188S DIST		2000 CENSUS: TOTAL POPULATION: DEVIATION		TOTAL	ANGLO	BLACK	HISP	B+H	OTHER	% POPULATION: %A	%B	%H	%B+H	%O	GENERAL ELECTION HISTORY*: -YEAR-	--VOTER REG-- TOTAL	%SPAN	---TURNOUT--- TOTAL	TO/VR	STATEWIDES** %DEM	%REP
23	Total	+ 17,988	(+2.67%)	690,627	131,674	279,924	268,704	545,557	13,396	19.1	40.5	38.9	79.0	1.9	2000	291,197	14.8	165,274	56.8%	72.2	27.8
	VAP			478,202	111,896	190,798	167,341	356,495	9,811	23.4	39.9	35.0	74.5	2.1	1998	273,554	13.1	92,737	33.9%	71.0	29.0
24	Total	-2,797	(-0.42%)	669,842	477,426	66,958	108,624	172,656	19,760	71.3	10.0	16.2	25.8	2.9	2000	351,152	8.9	228,770	65.1%	29.4	70.6
	VAP			494,185	371,855	42,503	66,819	107,964	14,366	75.2	8.6	13.5	21.8	2.9	1998	327,210	8.4	148,856	45.5%	36.1	63.9
25	Total	+ 26,764	(+3.98%)	699,403	466,576	29,936	183,062	211,074	21,753	66.7	4.3	26.2	30.2	3.1	2000	416,342	17.5	287,681	69.1%	31.4	68.6
	VAP			520,255	362,222	20,028	122,882	142,037	15,996	69.6	3.8	23.6	27.3	3.1	1998	370,460	16.7	164,649	44.4%	33.2	66.8
26	Total	-32,801	(-4.88%)	639,838	169,015	34,781	421,700	453,231	17,592	26.4	5.4	65.9	70.8	2.7	2000	324,895	56.6	171,936	52.9%	53.5	46.5
	VAP			458,721	136,408	23,367	287,155	309,049	13,264	29.7	5.1	62.6	67.4	2.9	1998	304,561	55.7	93,185	30.6%	54.9	45.1
27	Total	-31,736	(-4.72%)	640,903	83,570	4,632	549,373	552,266	5,067	13.0	0.7	85.7	86.2	0.8	2000	256,309	74.5	119,942	46.8%	57.8	42.2
	VAP			421,364	70,269	2,948	345,317	347,359	3,736	16.7	0.7	82.0	82.4	0.9	1998	242,824	73.8	65,053	26.8%	58.0	42.0
28	Total	+ 1,251	(+0.19%)	673,890	417,316	42,860	203,915	245,041	11,533	61.9	6.4	30.3	36.4	1.7	2000	356,726	20.6	218,774	61.3%	29.5	70.5
	VAP			496,874	330,090	29,631	129,178	158,170	8,614	66.4	6.0	26.0	31.8	1.7	1998	347,721	19.4	155,723	44.8%	38.0	62.0
29	Total	-31,849	(-4.73%)	640,790	114,087	23,302	494,799	514,832	11,871	17.8	3.6	77.2	80.3	1.9	2000	291,930	64.1	143,258	49.1%	56.6	43.4
	VAP			438,681	90,344	15,107	325,852	339,519	8,818	20.6	3.4	74.3	77.4	2.0	1998	267,238	62.8	90,457	33.8%	59.9	40.1
30	Total	+ 22,400	(+3.33%)	695,039	566,913	36,864	72,973	108,894	19,232	81.6	5.3	10.5	15.7	2.8	2000	365,121	4.2	238,886	65.4%	33.4	66.6
	VAP			514,077	429,160	25,831	45,381	70,800	14,117	83.5	5.0	8.8	13.8	2.7	1998	345,382	3.9	147,578	42.7%	40.3	59.7
31	Total	-17,402	(-2.59%)	655,237	408,651	32,883	200,841	232,128	14,458	62.4	5.0	30.7	35.4	2.2	2000	327,481	17.0	205,015	62.6%	24.5	75.5
	VAP			464,188	310,971	21,386	122,115	142,872	10,345	67.0	4.6	26.3	30.8	2.2	1998	319,705	15.5	135,879	42.5%	29.8	70.2

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